

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**RIVERBANKS RENAISSANCE PHASE I-A
OWNER, LLC,**
171 17th Street, Suite 1200
Atlanta, Georgia 30363

Plaintiff,

v.

**CRGE CINCINNATI, LLC D/B/A TOBY
KEITH'S I LOVE THIS BAR & GRILL**
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85281

and

FRANK CAPRI
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85281

and

CAPRI CONCEPTS
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85281

CLERK: Please also serve:
Gregory E. McClure, Esq.
4550 E. Bell Road, Suite 150
Phoenix, AZ 85032

Defendants.

Case No.: _____

Judge _____

COMPLAINT

Plaintiff Riverbanks Renaissance Phase I-A Owner, LLC ("Riverbanks") for its
Complaint against Defendants CRGE Cincinnati, LLC D/B/A Toby Keith's I Love This Bar &

Grill (“CRGE”), Frank Capri (“Capri”), and Capri Concepts, LLC (“Capri Concepts,” collectively with CRGE and Capri, the “Defendants”), alleges as follows:

PARTIES

1. Riverbanks is a Delaware limited liability company that maintains its headquarters at 171 17th Street, Suite 1200, Atlanta, Georgia 30363. Riverbanks is duly licensed to do business in Ohio.

2. Upon information and belief, CRGE is an Arizona limited liability company that maintains its headquarters in Scottsdale, Arizona.

3. Upon information and belief, Capri Concepts is an Arizona limited liability that maintains its headquarters in Scottsdale, Arizona.

4. Upon information and belief, Frank Capri is natural person who resides in Scottsdale, Arizona.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the Defendants pursuant to R.C. § 2307.382 because they transacted business in Ohio from which this action arises and have an interest in real property in Ohio. Additionally, the Defendants agreed to submit to personal jurisdiction in Ohio under the Lease Agreement and Guaranties at issue in this action.

6. Venue is proper in this Court pursuant to Ohio R. Civ. P. 3(B)(3) and 3(B)(5) because the Defendants conducted activity that gave rise to this action in Hamilton County and because the real property which is the subject of this action is situated in Hamilton County.

Additionally, CRGE agreed to venue in state court in Hamilton County, Ohio, under the Retail Lease Agreement at issue in this action.

BACKGROUND FACTS

The Retail Lease Agreement

7. On or about December 14, 2010, Riverbanks, as landlord, entered into a Retail Lease Agreement with CRGE, as tenant, for 77,298 square feet of retail space located in a building in the Banks project in Cincinnati, Ohio. A true and accurate copy of the Retail Lease Agreement is attached hereto as Exhibit A.

8. Under the Retail Lease Agreement, CRGE agreed to lease Retail Suite 120 for operation of Toby Keith's I Love This Bar & Grill.

9. Under Section 1.1 of the Retail Lease Agreement, the "Effective Date" is the later date of the landlord's or tenant's execution of the lease. The Effective Date of the Retail Lease Agreement is December 14, 2010.

10. CRGE is currently operating as Toby Keith's I Love This Bar & Grill.

11. Under Section 3.2 of the Retail Lease Agreement, CRGE is required to pay to Riverbanks Base Rent in monthly installments in advance on the first day of each and every calendar month during the lease term. The Base Rent for the initial term years 1-5 is \$41,066.67 per month.

12. Under Section 3.4 of the Retail Lease Agreement, CRGE is required to pay Riverbanks Tax and Insurance Expense Rent in equal monthly installments in advance during each year, each installment being due with the Base Rent. The Tax and Insurance Rent estimate

for calendar year 2011 was \$4.20 per square foot of premises rentable area and was based on a partial assessment for property taxes in 2011.

13. Under Section 14.2(i) of the Retail Lease Agreement, an “Event of Default” occurs when CRGE fails to pay when due any Rent and does not cure such failure to pay within five (5) business days after being provided written notice by Riverbanks thereof

14. Under Section 14.3 of the Retail Lease Agreement, if and whenever an Event of Default occurs, Riverbanks may, at its option, in addition to all other rights and remedies provided under the Retail Lease Agreement or by law or equity, exercise any one or more of the following remedies, separately, concurrently or in combination, without notice or demand whatsoever, unless explicitly provided, and without prejudice to any other remedy:

- a. To the maximum extent permitted by law, Riverbanks may declare all Rent due or to become due to be immediately due and payable;
- b. Riverbanks may hold CRGE liable for all Rent accrued to the date of the occurrence of the Event of Default, and all Rent thereafter required to be paid by CRGE during the lease term; and
- c. Riverbanks may do whatever CRGE is obligated to do under the terms of the Retail Lease Agreement, in which event CRGE is required to reimburse Riverbanks on demand for any expenses, including reasonable attorney’s fees, incurred in satisfaction and performance of or compliance with CRGE obligations under the lease.

The Guaranties

15. Under Section 19.25 of the Retail Lease Agreement, contemporaneously with the execution of the Retail Lease Agreement, Guaranties were required to be executed and delivered to Riverbanks.

16. In accordance with Section 19.25, Capri and Capri Concepts each executed a separate Guaranty unconditionally guarantying the full, prompt, and complete payment and performance by CRGE of all terms, covenants, conditions and agreements contained in the Retail Lease Agreement. Capri and Capri Concepts are jointly and severally liable under the Guaranties. The Guaranties specifically include the obligation to pay all rents and other charges or obligations under the Retail Lease Agreement. True and accurate copies of the Guaranties are attached hereto as Exhibits B & C.

Default under the Retail Lease Agreement

17. CRGE has failed to pay Base Rent to Riverbanks since November 2012 through present.

18. CRGE has failed to pay Tax and Insurance Rent to Riverbanks since November 2012 through present. A true and accurate listing of the total Base Rent, Tax and Insurance Rent and fees due through February 1, 2013 under the Retail Lease Agreement is attached hereto as Exhibit D.

19. On December 13, 2012, Riverbanks sent CRGE a notice of default of Sections 3.2 and 3.4 of the Retail Lease Agreement for its failure to pay rent, assessments and other charges due and owing. A true and accurate copy of the Notice is attached hereto as Exhibit E.

20. On January 22, 2013, Riverbanks sent CRGE an additional notice of the default. A true and accurate copy of the Notice is attached hereto as Exhibit F.

21. CRGE has failed to cure any of its defaults under the Retail Lease Agreement, including the failure to pay all rent, assessments and other charges due and owing.

COUNT I
Breach of Contract
(against CRGE)

22. Riverbanks repeats and realleges the allegations set forth in the foregoing paragraphs as if fully set forth herein.

23. The Retail Lease Agreement is a contract between Riverbanks and CRGE.

24. Riverbanks has complied with all of its obligations under the Retail Lease Agreement.

25. CRGE has breached the Retail Lease Agreement by failing to comply with its obligations, including their obligations under Sections 3.2 and 3.4 of the Retail Lease Agreement.

26. These breaches have caused Riverbanks to suffer substantial damages in excess of \$25,000, which amount shall be proven at trial.

COUNT II
Breach of Guaranties
(against Capri and Capri Concepts)

27. Riverbanks repeats and realleges the allegations set forth in the foregoing paragraphs as if fully set forth herein.

28. Capri and Capri Concepts each executed Guaranties unconditionally guarantying the full, prompt and complete payment and performance by CRGE of all terms, covenants, conditions and agreements contained in the Retail Lease Agreement.

29. CRGE has failed to perform its obligations under Sections 3.2 and 3.4 of the Retail Lease Agreement.

30. Capri and Capri Concepts breached their obligations under the Guaranties for the full and prompt payment and performance of all of CRGE obligations by failing to make such payment and performance thereunder, and thus have failed to satisfy their obligations as guarantors.

31. Because of the defaults by CRGE, and Capri's and Capri Concepts' failure to make performance and payment as required by the Guaranties, Riverbanks has suffered substantial damages in excess of \$25,000, which amount shall be proven at trial.

WHEREFORE, Riverbanks demands judgment against CRGE, Capri, and Capri Concepts as follows:

1. for all rents, payments, penalties, fines, interest, and costs due and payable under the Retail Lease Agreement, plus court costs, attorney's fees, and other costs incurred in this action;
2. for pre-judgment and post-judgment interest at the maximum rate allowed by law; and
3. for any other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Earl K. Messer

Earl K. Messer (0055280)

Emily C. McNicholas (0085149)

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emcnicholas@taftlaw.com

*Attorneys for Plaintiff Riverbanks Renaissance Phase
I-A Owner, LLC*

PRAECIPE FOR SERVICE

To the Clerk:

Please serve the Summons and copy of this Complaint on the Defendants at the addresses shown in the caption hereof by certified mail, return receipt requested.

Earl K. Messer
Earl K. Messer (0055280)

RETAIL LEASE AGREEMENT

FOR

**RIVERBANKS RENAISSANCE PHASE I-A
AT
THE BANKS**

Exhibit A

BASIC LEASE TERMS

The following are certain basic terms of this Retail Lease Agreement (this "Lease"), which are sometimes referred to in this Lease and which shall have the meanings set forth below:

Premises: Retail Suite 120 located in the Building and which is identified on Exhibit "C" attached hereto. The Premises extend to the center line of the party walls and to the exterior faces of all other walls, but reserving and excepting to Landlord and its permittees (without any allowance or deduction in computing the Premises Rentable Area) the exclusive use of the exterior walls (other than store fronts and Landlord-designated sign areas), the roof, the structural floor, the space above the ceiling, the space beneath the floor and the space between the interior (to the Premises) surfaces of the demising walls and the centerlines thereof; and the non-exclusive right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, and appurtenant fixtures, leading through the Premises. Additionally, Tenant will have the right to use the Outdoor Seating Area in accordance with and subject to Section 5.3.

Landlord: Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company

Landlord's Notice Address: 171 17th Street, Suite 1200
Atlanta, Georgia 30363
Attention: Scott Stringer

With a copy to:

Goff and Douglas, PC
21 East 6th Street, Unit 508
Tempe, Arizona 85281

Tenant: ORGE CINCINNATI, LLC, an Arizona limited liability company

Tenant's Notice Address: 7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251
Facsimile Number: _____

Additional party to receive notice:

Gregory E. McClure, Esq.
Lorona Steiner Ducar, Ltd.
3003 N. Central Avenue, Suite 1500
Phoenix, Arizona 85012
Facsimile Number 602-277-7478

Guarantor: Frank Capri and Capri Concepts, LLC, an Arizona limited liability company

Guarantors' Notice**Address:**

Frank Capri
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Capri Concepts, LLC
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Additional party to receive Notice for Guarantors:

Gregory E. McClure, Esq.
Lorona Steiner Ducar, Ltd.
3003 N. Central Avenue, Suite 1500
Phoenix, Arizona 85012
Facsimile Number 602-277-7478

**Landlord's Broker
(name and address):**

CB Richard Ellis
201 East 5th Street, Suite 1200
Cincinnati, Ohio 45202

**Tenant's Broker
(name and address):**

Marc Offit
The Sierra Group, Inc.
640 N. LaSalle Street, Suite 410
Chicago, Illinois, 60654

Tenant's Trade Name:

Toby Keith's I Love This Bar and Grill

**Tenant's Social Security
Number or Federal
Taxpayer ID Number:**

**Retail Facility Rentable
Area:**

77,298 square feet

Premises Rentable Area:

16,000 square feet

**Tenant's Retail Facility
Share:**

Twenty and 69/100ths percent (20.69%)

Initial Term:

The period of time commencing on the Effective Date and continuing for ten (10) Lease Years after the Rent Commencement Date.

Extension Term:

Two (2) Extension Terms of five (5) Lease Years, each, commencing upon the expiration of the Initial Term and upon the expiration of the first Extension Term, if applicable.

**Rent Commencement
Date:**

The earlier to occur of: (i) the date upon which Tenant first opens the Premises for business; or (ii) one hundred eighty (180) days after the later of (a) the date Landlord delivers the Premises to Tenant with Landlord's Work substantially complete or (b) the date of the issuance

(or deemed issuance, as provided in Section 2.2 below) of the permits required for the commencement of Tenant's Work.

Advance Deposit: N/A

Security Deposit: N/A

Landlord's Contribution to Tenant's Work: \$225.00 per square foot of floor area of the Premises

Base Rent During Initial Term and Extension Term:

<u>Lease Year</u>	<u>Annual Base Rent Per Square Foot</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Initial Term			
1-5	\$30.80	\$492,800.00	\$41,066.67
6-10	\$33.88	\$542,080.00	\$45,173.33
Extension Term			
11-15	\$37.29	\$596,640.00	\$49,720.00
16-20	\$41.02	\$656,320.00	\$54,693.33

Percentage Rent: The amount, if any, by which eight percent (8%) of Gross Sales each calendar year exceeds Base Rent due for such calendar year.

Tenant's Marketing Fund Contribution: N/A

INDEX

ARTICLE I	DEFINITIONS AND ENUMERATION OF EXHIBITS
ARTICLE II	CONSTRUCTION AND ACCEPTANCE OF PREMISES; TERM; OPTION TO EXTEND; OWNERSHIP OF FACILITY
ARTICLE III	TENANT PAYMENTS
ARTICLE IV	COMMON AREAS; PARKING
ARTICLE V	TENANT COVENANTS
ARTICLE VI	MAINTENANCE AND REPAIR OF PREMISES, ALTERATIONS AND LANDLORD'S RIGHT OF ACCESS
ARTICLE VII	SIGNS, STORE FRONTS AND ROOF
ARTICLE VIII	UTILITIES
ARTICLE IX	INDEMNITY AND NON-LIABILITY
ARTICLE X	INSURANCE
ARTICLE XI	DAMAGE BY CASUALTY
ARTICLE XII	EMINENT DOMAIN
ARTICLE XIII	ASSIGNMENT AND SUBLETTING
ARTICLE XIV	DEFAULTS AND REMEDIES
ARTICLE XV	TENANT'S BANKRUPTCY
ARTICLE XVI	SURRENDER; HOLDING OVER
ARTICLE XVII	SUBORDINATION; ATTORNMEN
ARTICLE XVIII	MERCHANTS ASSOCIATION
ARTICLE XIX	GENERAL PROVISIONS

LEASE

THIS RETAIL LEASE AGREEMENT is made and entered into this 14th day of December, 2010, by and between Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Landlord"); and CRGE Cincinnati, LLC, an Arizona limited liability company ("Tenant").

WITNESSETH THAT:

In consideration of the obligation of Tenant to pay Rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord, the Premises, as defined in Section 1.1.

TO HAVE AND TO HOLD the Premises for the Term, defined in Section 1.1.

ARTICLE I DEFINITIONS AND ENUMERATION OF EXHIBITS

1.1 Definitions. In addition to other terms which are elsewhere defined in this Lease, the following terms when used in this Lease shall have the meanings set forth in this Section 1.1, and only such meanings, unless such meanings are expressly limited or expanded elsewhere herein:

"Additional Rent": All amounts required to be paid by Tenant under this Lease, to Landlord or any other Person, other than Base Rent and Tax and Insurance Expense Rent.

"Affiliate": A Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified Person. For purposes of this definition, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting interests, by contract or otherwise.

"Alterations": Any and all changes, additions, improvements, reconstructions, removals or replacements of or to the Premises made by or on behalf of Tenant, including without limitation Tenant's Work.

"Assessment Costs": All assessments and other costs and expenses under the Declaration or any encumbrances (other than for sums borrowed by Landlord), declarations, easements or covenants affecting the Project.

"Assessment Rent": An amount for each Calculation Year determined as the product of the Assessment Costs for or reasonably allocated by Landlord to the Retail Facility for such Calculation Year times Tenant's Project Share.

"Award": Any amounts paid, recovered or recoverable as damages, compensation or proceeds by reason of any Taking or on account of a Taking, including all amounts paid pursuant to any agreement which has been made in settlement or under threat of any such action or proceeding, less the actual and reasonable costs and expenses incurred in collecting such amounts.

"Banks Project": The project heretofore developed, and hereafter to be developed, on the property of which the Project is a part and which is commonly known as the "Banks".

"Base Rent": As defined in the Basic Lease Terms. The Base Rent shall be payable by Tenant to Landlord in accordance with Section 3.2.

"Broker": Each Person named as Tenant's Broker or Landlord's Broker in the Basic Lease Terms (if more than one, jointly and severally).

"Building": The building located on Lots 26 and 16 in the Banks Project in Cincinnati, Ohio, and as shown on the Site Plan.

"Calculation Year": Each calendar year falling, in whole or in part, within the Term, commencing with the calendar year in which the Rent Commencement Date occurs.

"Casualty": Damage or destruction of the Project, or any portion thereof, by fire or other casualty.

"Claims": As defined in Section 9.1(a).

"Common Areas": Those facilities, areas and components of the Project which are provided by Landlord for the common use of the retail tenants in the Building and other occupants and users of the Project, including, without limitation, truck ways; landscaped areas; curbs; driveways; common loading areas; pedestrian walks and ramps; exterior and interior stairways; hallways; plumbing, security and fire detection and protection systems; storm, sanitary, drainage and other utility systems; and utility pipes, lines, wires, conduits and facilities which serve multiple tenants of the Building; provided, however, Common Areas shall not include (a) any facilities, areas or components of the Project which are installed by or exclusively serve a single tenant of the Project, or (b) areas within the Project which may from time to time not be owned by Landlord or in which Landlord and retail tenants in the Building do not have a right of use and access.

"Construction": Any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, excavation, building, rebuilding, renovation, or any similar term.

"Date of Casualty": The date on which a Casualty occurs.

"Date of Taking": The earlier of: (i) the date upon which title to the taken interest in the Project or portion thereof subject to a Taking is vested in the condemning authority; or (ii) the date upon which possession of the Project or portion thereof is taken by the condemning authority.

"Declaration": Collectively, (i) that certain unrecorded General Declaration of Covenants, Conditions and Restrictions by the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, to be recorded in the Hamilton County Recorder's Office in substantially the form attached hereto as Exhibit "L", as the same may have heretofore been modified, supplemented, and amended and as the same may hereafter be modified, supplemented, amended and replaced, (ii) the Specific Declaration, (iii) the General Declaration, (iv) that certain unrecorded Declaration of Easements, Covenants, Conditions and Restrictions (Lot 26B, The Banks, Phase IV) by the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, to be recorded in the Hamilton County Recorder's Office in substantially the form attached hereto as Exhibit "M", as the same may have heretofore been modified, supplemented, and amended and as the same may hereafter be modified, supplemented, amended and replaced, (v) that certain unrecorded Declaration of Easements, Covenants, Conditions and Restrictions (Lot 16B, The Banks, Phase IV) by the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, to be recorded in the Hamilton County Recorder's Office in substantially the form attached hereto as Exhibit "N", as the same may have heretofore been modified, supplemented, and amended and as the same may hereafter be modified, supplemented, amended and replaced, (vi) that certain Declaration of Easements by the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, recorded in the Hamilton County Recorder's Office on November 20, 2009 as Document No. 09-0154994, and (vii) any subsequent similar instruments for the project generally known as "The Banks" and that affect the Project.

"Effective Date": The later of the date of Landlord's or Tenant's execution of this Lease, as set forth below their respective executions hereof.

"Environmental Laws": Any "Super Fund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or common law principle (including,

without limitation, claims for nuisance, trespass or strict liability), regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated thereunder or in connection therewith: The Super Fund Amendments and Reauthorization Act of 1986; The Comprehensive Environmental Response, Compensation and Liability Act of 1980; The Clean Air Act; the Clean Water Act; The Federal Water Pollution Act; The Toxic Substances Control Act; The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970.

"Expiration Date": The last day of the Initial Term or, if the Term is extended for any Extension Term, the last day of the last Extension Term for which the Term is extended.

"Extension Notice": Written notice from Tenant to Landlord indicating Tenant's election to extend the Term for the applicable Extension Term.

"Extension Term": As defined in the Basic Lease Terms.

"General Declaration": That certain unrecorded Declaration of Covenants, Conditions, Restrictions, Reservations and Easements by the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, to be recorded in the Hamilton County Recorder's Office in substantially the form attached hereto as Exhibit "O", as the same may have heretofore been modified, supplemented, and amended and as the same may hereafter be modified, supplemented, amended and replaced.

"Governmental Authority": Any federal, state, county or municipal governmental authority, including all executive, legislative, judicial and administrative bodies thereof.

"Governmental Requirement": All constitutions, statutes, laws, ordinances, codes, regulations, resolutions, rules, requirements and directives of any Governmental Authority, and all decisions, judgments, writs, injunctions, orders, decrees or demands of Governmental Authorities construing any of the foregoing.

"Gross Sales": The dollar aggregate of all income, from whatever source, generated from all business conducted upon or from the Premises by Tenant and all other Persons during the Term, including, without limitation: the entire amount of gross receipts from sales of Tenant and of all licensees, concessionaires, so-called "leased department" operators, and subtenants of Tenant, whether such sales are evidenced by check, credit, charge account, exchange or otherwise; amounts received from the sale of goods, wares and merchandise (including gift and merchandise certificates) and for services performed on or at the Premises (including the value of all goods accepted in lieu of cash payment), and deposits not refunded to customers, and whether such sales are made by means of merchandise or other vending devices in the Premises; and the entire sales price of merchandise sold as a result of orders taken at the Premises but delivered elsewhere, and the entire sales price of merchandise delivered from the Premises as a result of orders taken elsewhere. If any one or more departments or other divisions of Tenant's business shall be licensed or sublet by Tenant or conducted by any Person other than Tenant, then there shall be included in Gross Sales all the income generated by such departments or divisions, whether from sales filled at the Premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the calendar month during which such charge or sale shall initially be made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefor. Notwithstanding any provision of this Lease to the contrary, in no event will income excluding income from the sale of retail merchandise from the retail store portion of the Premises be included in Gross Sales. There shall be no deduction for uncollected or uncollectible credit accounts or for bad debts or other losses. Gross Sales shall not include sales of merchandise for which, and to the extent that, cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided that the original sale price of such

merchandise shall have been included in Gross Sales; and there shall be deducted from Gross Sales the sale price of merchandise returned by customers for exchange, provided that the sale price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales, use, service, gross receipts or other like tax imposed by any Governmental Authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by Tenant to such Governmental Authority. No franchise, capital stock or personal property tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Sales in any event whatsoever.

"Hazardous Materials": Petroleum products, flammable explosives, radioactive materials, asbestos or any material containing asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, freon and other chlorofluorocarbons, or any hazardous, toxic or dangerous waste, substance or material defined as such or defined as a hazardous substance or any similar term, by, in or for the purposes of the Environmental Laws.

"Impositions": Any and all of the following levied, assessed or imposed upon, against or with respect to this Lease, the Project, any part of the Project or the use and occupancy of the Project at any time during the Term: (i) real property ad valorem taxes and assessments; (ii) personal property taxes imposed upon any personal property used in the operation and maintenance of the Project; (iii) charges made by any public or quasi-public authority for improvements or betterments related to the Project; (iv) fire, sanitary, sewer and water taxes, assessments and charges; (v) any tax levied, assessed or imposed upon or against the rent received from the Project or upon Landlord's interest in the Project or the leases of the Project; (vi) any governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever related to the Project, whether general or special, whether ordinary or extraordinary, and whether foreseen or unforeseen, and whether payable in installments or not; and (vii) any governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever that are in substitution for or of any of the foregoing. **"Impositions"** include the cost of any contest of the foregoing or the assessed valuation of the Project that Landlord may pursue in its sole discretion, including fees and disbursements of attorneys, tax consultants, arbitrators, appraisers, experts and other witnesses. Tenant waives any right of appeal of any property tax valuation.

"Insurance Requirement": Any one or more of the terms of each insurance policy required to be carried by Landlord or Tenant under this Lease and the requirements of the issuer of such policy or any public or private agency having authority over insurance rates.

"Landlord's Contribution to Tenant's Work": As set forth in the Basic Lease Terms.

"Landlord's Representatives": As defined in Section 9.1(a).

"Landlord's Work": Only the work that is expressly required to be performed by Landlord pursuant to Section I of Exhibit D.

"Lease Year": A period of time determined as follows: (i) if the Rent Commencement Date is the first (1st) day of a calendar month, the twelve (12) calendar month period commencing on the Rent Commencement Date and ending on the day immediately preceding the first (1st) anniversary of the Rent Commencement Date, and each succeeding such twelve (12) calendar month period during the Term; and (ii) if the Rent Commencement Date is a day other than the first (1st) day of a calendar month, the twelve (12) calendar month period commencing on the first (1st) day of the first (1st) calendar month following the Rent Commencement Date and ending on the day immediately preceding the first (1st) anniversary of such date, and each succeeding such twelve (12) calendar month period during the Term; provided, however, that, if the Rent Commencement Date is a day other than the first (1st) day of a calendar month, the first Lease Year shall include the period from the Rent Commencement Date through the last day of the calendar month during which the Rent Commencement Date occurs.

"Mortgage": Any mortgage, deed to secure debt, deed of trust, trust deed, ground lease or other conveyance of, or lien or encumbrance against, the Project as security for any debt, whether now existing or hereafter arising or created. **"Mortgages"** shall mean more than one **"Mortgage"**.

"Mortgagee": The holder of any Mortgage, together with the heirs, legal representatives, successors, transferees and assigns of the holder. **"Mortgagees"** shall mean more than one **"Mortgagee"**.

"Parcel": All that tract or parcel of land lying and being in the City of Cincinnati, Hamilton County, Ohio, more particularly described on Exhibit "A" attached hereto, upon which the Building has been constructed.

"Percentage Rent": As defined in the Basic Lease Terms. The Percentage Rent shall be payable by Tenant to Landlord in accordance with Section 3.3.

"Permitted Use": The operation of a first class country-music themed restaurant and lounge offering live music and serving a variety of food and beverages that will not conflict with any exclusive use granted to another tenant or occupant of the Banks Project, and for no other use or purpose. Carry-out service, on-Premises banquet facilities and off-Premises catering shall be permitted as an adjunct to the operation of the Premises as a restaurant and lounge.

"Person": An individual, limited liability company, partnership, joint venture, association, corporation, trust or any other legal entity.

"Premises Rentable Area": As set forth in the Basic Lease Terms.

"Proceeds": The amounts recovered or recoverable as compensation or damages for damage to the Project or the Premises on account of a Casualty, including insurance payments, less the actual and reasonable costs and expenses incurred in collecting such amounts. Proceeds expressly exclude any amount self-insured by Landlord, under a formal self-insurance program, or otherwise.

"Project": The Project consists of: (a) the Parcel; (b) the Building and the improvements constructed on the Parcel, together with all alterations and additions thereto; and (c) such buildings and improvements as may be constructed on the Parcel after the date hereof. In addition to its other rights set forth herein, Landlord reserves the right at any time and from time to time to change the number and location of buildings, building dimensions, and the Common Areas, provided that reasonable access to the Premises shall not be materially impaired.

"Project Rentable Area": At any given time and from time to time, the Rentable Area of all improvements from time to time existing in the Project.

"Project Tax and Insurance Expenses": All Tax and Insurance Expenses other than Retail Facility Tax and Insurance Expenses.

"Release" shall have the meaning given such term, or any similar term, in the Environmental Laws.

"Rent": All Base Rent, Tax and Insurance Expense Rent, Additional Rent and all other amounts, liabilities and obligations which Tenant has assumed or agreed to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof pursuant to the terms of this Lease.

"Rentable Area": As set forth in the Basic Lease Terms for the Premises and the Retail Facility, and as determined by Landlord following any increase or decrease in the size of the Premises or the Building for any reason whatsoever, and as determined by Landlord with respect to any other space (including without limitation the Project or the Retail Facility). Tenant acknowledges that the

measurement standards applied to retail spaces are not necessarily the same as those applied to other uses within the Project.

"Retail Facility": Those portions of the Project designated from time to time by Landlord for retail use and occupancy. The Retail Facility, as currently configured, is depicted on the Site Plan.

"Retail Facility Rentable Area": As set forth in the Basic Lease Terms.

"Retail Facility Tax and Insurance Expenses": Tax and Insurance Expenses paid or incurred by Landlord and that disproportionately benefit or relate exclusively to the Retail Facility, as determined by Landlord in its reasonable judgment and discretion.

"Rules and Regulations": The Rules and Regulations set forth on Exhibit "F" attached hereto, as they may be supplemented or amended from time to time by Landlord as provided in this Lease.

"Sign Criteria": The sign criteria set forth on Exhibit "H" attached hereto.

"Site Plan": The site plan attached hereto as Exhibit "C".

"Specific Declaration": That certain unrecorded Specific Declaration of Easements, Covenants, Conditions and Restrictions by Riverbanks Renaissance Phase I-B Owner, LLC, Landlord, the Board of County Commissioners of Hamilton County, Ohio, and the City of Cincinnati, Ohio, to be recorded in the Hamilton County Recorder's Office in substantially the form attached hereto as Exhibit "P", as the same may have heretofore been modified, supplemented, and amended and as the same may hereafter be modified, supplemented, amended and replaced.

"Taking": Any condemnation or exercise of the power of eminent domain by any public or other authority vested with such power, or any taking in any other manner for public or quasi-public use, including a private purchase, in lieu of condemnation, by a public or other authority vested with the power of eminent domain.

"Tax and Insurance Rent": An amount for each Calculation Year determined as the sum of (a) Tenant's Tax and Insurance Expense Charges, and (b) Assessment Rent.

"Tax and Insurance Expenses": All costs and expenses incurred or paid by Landlord for: (a) Impositions and (b) premiums and deductibles for insurance obtained by Landlord (and the amounts of premiums and deductibles that would have been paid by Landlord for insurance of risks in respect of which Landlord elects to self-insure).

"TCM": The tenant construction manual for the Retail Facility and/or Project, as more particularly defined in Exhibit "D".

"Tenant Party" and "Tenant Parties": As defined in Section 9.1(a).

"Tenant Personalty": All merchandise, trade fixtures, equipment and other items of personal property that are owned by or in the possession of Tenant and used in the operation of the business conducted on the Premises, including, without limitation, signage of Tenant. Landlord hereby acknowledges that memorabilia, equipment or other items of personal property belonging to Toby K. Coval aka Toby Keith and/or ILTB, LLC, an Oklahoma limited liability company, upon the Premises may not be owned by Tenant.

"Tenant's Project Share": A fraction (expressed as percentage), the numerator of which shall be the Premises Rentable Area, and the denominator of which shall be the Project Rentable Area.

"Tenant's Retail Facility Share": A fraction (expressed as a percentage), the numerator of which is the Premises Rentable Area, and the denominator of which is the Retail Facility Rentable Area.

"Tenant's Tax and Insurance Expense Charges": An amount for each Calculation Year determined as the sum of (a) the product of Project Tax and Insurance Expenses for such Calculation Year times Tenant's Project Share, and (b) the product of Retail Facility Tax and Insurance Expenses for such Calculation Year times Tenant's Retail Facility Share.

"Tenant's Trade Name": The trade name or trade style set forth in the Basic Lease Terms, or such other trade name or trade style as Tenant may select and Landlord may approve from time to time.

"Tenant's Work": Those items set forth on Exhibit "D" attached hereto to be performed by Tenant.

"Term": The Initial Term and, if Tenant exercises its option therefor, the Extension Term.

1.2 Enumeration of Exhibits. The Exhibits enumerated in this Section (if used) and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit "A" -	Legal Description of the Parcel
Exhibit "B" -	Depiction of Premises
Exhibit "C" -	Site Plan
Exhibit "D" -	Description of Landlord's and Tenant's Work
Exhibit "E" -	Form of Guaranty
Exhibit "F" -	Rules and Regulations
Exhibit "G" -	Special Stipulations
Exhibit "H" -	Sign Criteria
Exhibit "H-1" -	Tenant's Approved Signage
Exhibit "I" -	Prohibited Uses
Exhibit "J" -	Form of Acceptance Agreement
Exhibit "K" -	Outdoor Dining Area
Exhibit "L" -	General Declaration of Covenants, Conditions and Restrictions
Exhibit "M" -	Declaration of Easements, Covenants, Conditions and Restrictions (Lot 26B, The Banks, Phase IV)
Exhibit "N" -	Declaration of Easements, Covenants, Conditions and Restrictions (Lot 16B, The Banks, Phase IV)
Exhibit "O" -	General Declaration
Exhibit "P" -	Specific Declaration

ARTICLE II

CONSTRUCTION AND ACCEPTANCE OF PREMISES; TERM; OPTION TO EXTEND; OWNERSHIP OF FACILITY

2.1 Acceptance of Premises. Tenant acknowledges that neither Landlord nor any of Landlord's agents, employees, representatives, legal representatives or brokers has made any representations or warranties whatsoever, express or implied, as to the Premises (including, without limitation, as to the condition thereof or the location, use, description, design, merchantability, fitness or suitability for use for Tenant's business or any other particular purpose, condition, or durability thereof), it being agreed that all risks incident thereto are to be borne by Tenant, and that neither Landlord nor any of Landlord's agents, employees, representatives, legal representatives or brokers has agreed to undertake or cause to be undertaken any alterations or to construct any improvements to the Premises or the Project except as expressly provided in this Lease. Tenant agrees that Tenant will accept the Premises in its condition AS-IS, WHERE IS and WITH ALL FAULTS as of the date Tenant accepts possession of the Premises, and that Landlord shall not be required to perform any tenant improvements with respect thereto beyond Landlord's Work. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. TENANT ACKNOWLEDGES THAT (1) NEITHER LANDLORD NOR ANY LANDLORD PARTY HAS MADE ANY WARRANTY, REPRESENTATION, COVENANT, OR

AGREEMENT WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PREMISES, (2) NO REPRESENTATIONS AS TO THE REPAIR OF THE PREMISES, NOR PROMISES TO ALTER, REMODEL OR IMPROVE THE PREMISES HAVE BEEN MADE BY LANDLORD OR ANY LANDLORD PARTY (EXCEPT TO THE EXTENT OF LANDLORD'S WORK, IF ANY), AND (3) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, THAT EXTEND BEYOND THE DESCRIPTION OF THE PREMISES. Except as provided in this paragraph, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that all of Landlord's Work was complete, that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for any punchlist items agreed to in writing by Landlord and Tenant on or before the date possession was taken. Tenant shall, within ten (10) days after written request from Landlord, execute and deliver an agreement confirming the Rent Commencement Date, the Term, and Tenant's acceptance of the Premises, which agreement shall be in substantially the form attached hereto as Exhibit "J".

2.2 Tenant's Plans. Tenant shall submit to Landlord, within thirty (30) days after the Effective Date, plans and specifications in such detail as Landlord may reasonably request covering Tenant's Work as defined in Exhibit "D", and any other work which Tenant proposes to do in the Premises. Such plans and specifications shall comply with all requirements set forth in Exhibit "D". Tenant shall not commence any work in the Premises until Landlord has approved the plans and specifications therefor in writing, which approval shall not be unreasonably withheld or delayed. Any approval by Landlord of Tenant's plans and specifications shall not be deemed to be a representation or warranty that such plans and specifications comply with any Governmental Requirement or with sound or proper engineering practices, are free from design or other defects or were prepared by a qualified or competent architect. Within fifteen (15) days after Landlord's approval of such plans and specifications, Tenant must submit such Landlord-approved plans and specifications to all applicable permitting authorities. Thereafter, Tenant must promptly and timely comply with all requests and requirements of such permitting authorities. If the plans and specifications are revised by Tenant for any reason, they must be re-submitted to Landlord in accordance with this Section 2.2 and must receive Landlord's written approval prior to any submission of such revised plans and specifications to applicable permitting authorities. For the purposes of determining the Rent Commencement Date, if Tenant fails to comply with its obligations set forth in this Section 2.2 with respect to the diligent preparation of plans, submission of the same to Landlord and application for and diligent pursuit of Tenant's building permit, then, notwithstanding any provision hereof to the contrary, the date of issuance of Tenant's building permit shall be deemed to be the date on which Tenant would have received such building permit had Tenant complied with the foregoing obligations related to plan preparation and approval and permit application and pursuit. If Tenant fails to procure any permit required for the commencement of Tenant's Work within sixty (60) days after Tenant's application for same, then Landlord shall have the right (but not the obligation) for the next sixty (60) days to pursue such permit on Tenant's behalf and at Tenant's sole cost and expense. Tenant shall fully cooperate with any and all such Landlord efforts. If Landlord fails to procure any permit required for the commencement of Tenant's Work within sixty (60) days after Landlord commences its pursuit of such permit, then Tenant shall have the right, within five (5) days following the expiration of the 60-day period for Landlord to obtain the required permits, to terminate this Lease upon written notice to Landlord, in which event Landlord and Tenant shall be released from all liability hereunder accruing thereafter. Notwithstanding any provision of this Lease to the contrary, in the event Tenant has not submitted applications to the applicable government authorities for all permits required for the construction of Tenant's Work and the operation of the Premises for Tenant's intended use, including, but not limited to, a liquor license and building permit, by March 1, 2011, then Landlord shall have the right, at any time prior to Landlord's receipt of copies of all required applications, to terminate this lease upon written notice to Tenant, in which event neither party shall have any further obligations under this Lease.

2.3 Tenant's Work. On the date Landlord tenders possession of the Premises to Tenant, Tenant shall accept possession of the Premises and proceed with due diligence to perform the work described in such plans and specifications which have been approved by Landlord, and to install its fixtures, furniture, and equipment in the Premises.

2.4 Opening for Business. Tenant shall open the Premises to the public for business fully fixtured, stocked and staffed for the Permitted Use on or before the Rent Commencement Date. In the event that Tenant fails to open the Premises for business fully fixtured, stocked, and staffed on or before the sixtieth (60th) day after the Rent Commencement Date, then, unless such delay is caused or occasioned by Landlord's having unreasonably withheld or delayed approval of any plans submitted by Tenant in accordance with Section 2.2, Landlord shall have, in addition to any and all remedies herein provided, the right at its option to collect rent at the rate of One Thousand and 00/100 Dollars (\$1,000.00) per day for each and every day that Tenant shall fail to commence to do business as herein provided; said rent shall be in addition to the Base Rent and other Rent otherwise provided for herein and is intended to contribute to the expense of monitoring Tenant's failure to open and lost customer traffic within the Project and shall not be deemed a penalty or liquidated damages. Landlord may offset any amounts payable by Tenant hereunder against any amounts Landlord may owe Tenant.

2.5 Modifications to Lease. If, in connection with any proposed financing for the Project or the Retail Facility (or any portion thereof), a bank, insurance company or other recognized institutional lender shall request reasonable modifications to the terms and provisions of this Lease as a condition to such financing, Tenant shall consent and agree thereto, and shall execute an instrument agreeing to such modifications within ten (10) days after Landlord's request therefor, provided that such modifications do not materially increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created. Further, if Landlord is unable to obtain financing for the Project or the Retail Facility without modifications to the terms and provisions of this Lease to which Tenant is not obligated to agree pursuant to the immediately preceding sentence, and Tenant refuses to execute an instrument agreeing to such modifications within fifteen (15) days after Landlord's request therefor, Landlord and Tenant shall have the right, at their option, to terminate this Lease by giving written notice to the other party, in which event this Lease shall terminate, and the Term shall expire, on the date thirty (30) days after the date upon which the electing party gives notice of termination with the same effect as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including such date. Notwithstanding the foregoing, Landlord will have the right to rescind its request for Tenant to execute such instrument within such thirty (30)-day period, whereupon Tenant's election to terminate will be automatically nullified and this Lease will continue uninterrupted, without the requested change.

2.6 Rights Reserved to Landlord. Landlord may, from time to time and without any compensation or consideration of any kind to Tenant, do any one or more of the following with respect to the Project, the Retail Facility, the Common Areas or any areas adjoining any of the foregoing, all as constituted from time to time: (i) construct modifications thereof or alterations thereto; (ii) construct additions thereto; (iii) construct additional stories on any building; (iv) construct additional buildings, free-standing or connected to the then-existing buildings; (v) construct deck or elevated parking facilities, freestanding or connected to then-existing buildings; (vi) rearrange, build upon or eliminate any Common Areas; (vii) subdivide or combine any constituent parcels thereof and/or any parcels adjacent to any such constituent parcels; (viii) re-name the Project; (ix) change the number and location of buildings, building dimensions, and the Common Areas, provided that access to the Premises shall not be materially impaired; (x) make or permit changes or revisions in the site plan for the Project including additions to, subtractions from, rearrangements of, alterations of, modifications of or supplements to the building areas, walkways, parking areas, driveways, Common Areas and other portions of the Project; or (xi) make or permit any other changes or revisions in the Project, including additions thereto, subtractions therefrom and subdivisions thereof, and convey portions of the Project to others for the purpose of constructing thereon other buildings or improvements, including additions thereto, subtractions therefrom, subdivisions thereof and alterations thereof.

2.7 Initial Term. As set forth in the Basic Lease Terms, the Initial Term shall be for the number of Lease Years set forth therein, commencing on the Rent Commencement Date and expiring on the Expiration Date.

2.8 Extension Terms. If no Event of Default under this Lease shall then exist and this Lease shall then be in full force and effect, Tenant shall have the right to extend the Term of this Lease for up to two (2) Extension Terms, by delivering an Extension Notice to Landlord not less than three hundred sixty

(360) days prior to the expiration of the Initial Term or the first Extension Term, as applicable. If Tenant exercises the foregoing right to extend the Term, all terms and conditions of this Lease (other than the option to extend so exercised) shall remain in full force and effect, and the Expiration Date shall be extended to the last day of the first Extension Term or second Extension Term, as applicable.

2.9 Ownership of Facility. Landlord and Tenant expressly acknowledge that, as of the date of this Lease: (i) Landlord is the owner of the Project and certain air rights relating to the Project; and (ii) except for such ownership interests of Landlord, Hamilton County is the owner of fee simple title to the land and parking structure underlying the Project. This Lease is subject and subordinate to and Tenant covenants to comply with all of the terms, covenants, conditions, agreements, requirements, restrictions and provisions the Declaration and all other matters that are of record or otherwise disclosed to Tenant prior to the date hereof. At any given time, Landlord or Affiliates of Landlord may also be the "Declarant" under the Declaration. Tenant understands that when acting in its capacity as Declarant, Landlord's of its Affiliate's rights, obligations and approval standards will be governed exclusively by the terms of the Declaration and, when acting in its capacity as Landlord hereunder, Landlord's rights, obligations and approval standards will be governed exclusively by this Lease. No waiver, estoppel, consent, approval or authorization given by Landlord under this Lease will constitute a waiver, estoppel, consent, approval or authorization under the Declaration, and no consent, approval or authorization given by Landlord or its Affiliate under the Declaration will constitute a consent, approval or authorization under this Lease. In each such case, each such waiver, estoppel, consent, approval or authorization will be effective only with respect to the capacity specified in writing in the document granting such waiver, estoppel, consent, approval or authorization, or, if and only if no such capacity is so specified, then such waiver, estoppel, consent, approval or authorization will be effective only with respect to the capacity being applied to in Tenant's written request for a waiver, estoppel, consent, approval or authorization. Landlord or its Affiliate may in any event and when acting in either capacity apply the stricter of the standards set forth in the Declaration and this Lease as to any matter.

2.10 Remodeling. If at any time from time to time during the Term Landlord remodels all or any portion of the Retail Facility, and such remodeling includes the Premises or a portion thereof, then Landlord shall have the right to enter and/or close the Premises in connection with such remodeling. In the event of any remodeling pursuant to this Section 2.10, Landlord shall repair any damage to the Premises caused thereby. No closure of the Premises required under this Section 2.10 may continue for more than thirty (30) days. During any such required closure, Base Rent shall be abated during the period of Tenant's cessation of business from the Premises. Upon approval of Landlord, Tenant may close its doors for business for an agreed upon period of time not to exceed thirty (30) days, in the aggregate, in any five (5) years to complete remodeling and upgrades to the Premises if such remodeling is deemed necessary by Tenant. In no event will any Rent be abated during such closure.

ARTICLE III TENANT PAYMENTS

3.1 Manner and Place of Payment. All Rent due and payable hereunder shall be payable at the following mailing address unless otherwise directed by Landlord in writing: Jeffrey R. Anderson Real Estate, Inc. 3805 Edwards Rd., Suite 700, Cincinnati, Oh 45209. The covenant of Tenant to pay Rent under this Lease is and shall be deemed a separate and independent covenant. In addition, except as otherwise expressly provided herein, all Rent will be payable without notice or demand of any kind.

3.2 Base Rent. Tenant shall pay to Landlord, without notice or demand or notice of any kind, in monthly installments in advance, on the first day of each and every calendar month during the Term, the Base Rent set forth in the Basic Lease Terms.

3.3 Percentage Rent.

(a) Amount. In addition to Base Rent, Tenant covenants and agrees to pay to Landlord, without notice or demand of any kind, Percentage Rent in the amount(s) set forth in the Basic Lease Provisions.

(b) Payment.

(i) Percentage Rent will be estimated and paid monthly on or before the twentieth (20th) day of each month based on the Gross Sales and the Base Rent payable for the previous calendar month.

(ii) Upon submission of Tenant's certified statement of Gross Sales at the close of each calendar year, as provided in Section 3.3(c)(ii), adjustments of amounts due for Percentage Rent shall be made to the respective parties. Overpayments of Percentage Rent shall be credited against the next installment of Percentage Rent due (unless at the end of the Term, in which case Landlord shall pay such amount to Tenant within thirty (30) days after Tenant has delivered its certified statement of Gross Sales to Landlord). Underpayments of Percentage Rent shall be paid to Landlord within thirty (30) days after Tenant has delivered its certified statement of Gross Sales to Landlord.

(iii) Notwithstanding the provision for the payment of Percentage Rent, Landlord shall not, in any event, be deemed to be a joint venturer, partner or associate of Tenant in the conduct of its business. The relationship of the parties hereto shall, at all times, be solely that of Landlord and Tenant.

(iv) In determining Percentage Rent, Gross Sales will specifically exclude: (A) income received for retail merchandise sales with respect to which Tenant is required to pay royalties to Toby Keith and (B) door cover charges. Tenant must keep records of all amounts excluded under this clause (iv) and must include a separate itemization of such excluded amounts in any report of Gross Sales that is required to be provided under this Section 3.3.

(c) Reporting.

(i) Tenant shall submit to Landlord, on or before the tenth (10th) day of each month of each Lease Year, commencing in the second month of the first Lease Year, a written statement signed by Tenant showing Tenant's Gross Sales, as herein defined, for the preceding calendar month.

(ii) On or before thirty (30) days following the close of each calendar year (or the expiration or sooner termination of this Lease), Tenant shall furnish to Landlord a statement certified by an officer of Tenant, or a certified public accountant employed by Tenant, of the Gross Sales made by Tenant from the Premises during the preceding calendar year (or portion thereof).

(iii) For the purpose of ascertaining the amount of reportable sales and revenue, Tenant agrees to record each and every sale at the time of the transaction on (A) a cash register having a sealed, continuous, cash register tape with cumulative totals, which numbers, records, and duplicates each transaction entered into the register (in any event such cash register must have a non-resettable grand total), (B) serially pre-numbered sales slips, or (C) a computer system that produces and maintains comparable records. If Tenant chooses to record each sale by using a cash register, Tenant agrees that the continuous, cash register tape will be sealed or locked in such a manner that it is not accessible to the individual operating the cash register. If Tenant chooses to record each sale on a computer system, Tenant agrees that such computer system will be set up so that such records cannot be changed by the individual operating the computer system. If Tenant chooses to record each sale on individual sales slips, Tenant agrees that said sales slips (including those canceled, voided, or not used) will be retained in numerical sequence for the period set forth in this Section 3.3.

(iv) If Tenant shall fail to prepare and deliver any statement of Gross Sales on or before the 20th day of each month following the first full month of operation, Landlord may do any or all of the following: (A) elect to treat Tenant's failure to report as a default of this Lease, (B) elect to make an audit, at Tenant's expense, of all books and records of Tenant which in any way pertain to or show Gross Sales and to prepare the statement or statements which Tenant has failed to prepare and deliver, in which event Tenant must reimburse Landlord, as Additional Rent, for the cost of such audit and statement preparation and pay any Percentage Rent such audit reveals to be due and owing upon Landlord's demand therefor, or (C) impose, as Additional Rent, a late/non-reporting fee of Five Hundred and

No/100ths Dollars (\$500.00) for each such failure by Tenant. The statement or statements so prepared shall be conclusive and binding on Tenant, and Tenant shall pay, as Additional Rent, on demand all expenses of such audit and of the preparation of any such statements and all sums as may be shown by such audit to be due as Percentage Rent.

(d) Books and Records.

(i) Tenant agrees to keep on the Premises, or at its principal office, accurate books and records (as more specifically identified below) of all business conducted at the Premises in accordance with generally accepted accounting practices consistently applied, and said records shall be open and available for examination at the Premises at all reasonable times to Landlord, or Landlord's representatives, upon reasonable notice to Tenant, for the purpose of ascertaining or verifying the Gross Sales. All records shall be retained by Tenant for examination by Landlord for a period of at least two (2) years following the end of the calendar year to which said records apply.

(ii) Tenant further agrees that for the purposes hereinbefore recited, Tenant shall prepare, preserve and maintain for each calendar year, the following documents, books, accounts and records:

(A) Daily cash register summary tapes (often referred to as "Z Tapes") and sealed, continuous, cash register tapes, pre-numbered sales slips or comparable computer records, maintained as recited herein;

(B) A single, separate bank account into which all receipts of business and other revenue from operations on or from the Premises are deposited;

(C) All bank statements detailing transactions in or through any business bank account;

(D) Daily or weekly sales recapitulations;

(E) A sales journal;

(F) A general ledger or a summary record of all cash receipts and disbursements from operations on or from the Premises;

(G) Copies of all sales or use tax returns filed with any governmental authority which reflect in any manner sales, income or revenue generated in or from the Premises; and

(H) Such other records or accounts as Landlord may reasonably require in order to ascertain, document, or substantiate reportable Gross Sales (and any deductions and exclusions therefrom) as defined herein.

(iii) If upon inspection or examination of Tenant's available books and records of account, Landlord determines that Tenant has failed to maintain, preserve, or retain the above-recited documents, books, and records of account in the manner detailed herein, Landlord shall give Tenant sixty (60) days to cure said deficiencies. Further, if Tenant is found to be deficient in maintaining any of the above-recited documents, books or records of account, Tenant shall reimburse Landlord for reasonable expenses incurred by Landlord in determining said deficiencies, including, but not limited to, any audit or examination fees incurred by Landlord.

If after receiving the aforesaid notice, and upon expiration of the sixty (60)-day time period specified herein, Tenant fails to cure the noted deficiencies, Landlord may, at its option, either grant Tenant additional time to cure the deficiencies, hold Tenant in default of this Lease, or at Tenant's expense, and for its benefit, retain a good and reputable independent accounting or bookkeeping firm to prepare and maintain the above-recited documents, books and records of accounts. If Landlord elects

the last option, Tenant agrees and covenants that the representative or representatives of said accounting or bookkeeping firm will have full right of entry and access to the Premises and existing financial records, and full cooperation by Tenant, for the purpose of establishing and maintaining the documents, records and books of account recited hereinabove. Any expenses incurred by Landlord in furtherance of its rights hereunder will be considered Additional Rent for the Premises due and payable by Tenant with the next due installment of Rent.

(iv) In the event an examination of the records of Tenant to verify said Gross Sales shall disclose a deficiency in excess of two percent (2%) of the Gross Sales reported for any calendar year with respect to which Percentage Rent is due Landlord, Tenant agrees to pay to Landlord the reasonable costs and expenses of such audit as Additional Rent. Any additional Percentage Rent found due and owing as a result of said audit shall be immediately paid by Tenant to Landlord upon demand. If an examination by Landlord or its representative discloses that Tenant has overreported Gross Sales and that, as a result of said overreporting, Tenant has overpaid Percentage Rent, Landlord shall give Tenant credit against the next due installment of Percentage Rent due and owing by Tenant for the overpaid Percentage Rent (or, if at the end of the Term, Landlord shall pay such amount to Tenant within thirty (30) days after Tenant has delivered its certified statement of Gross Sales to Landlord).

3.4 Tax and Insurance Expense Rent.

(a) For each Calculation Year, Tenant shall pay to Landlord, without notice, demand deduction or set-off, the Tax and Insurance Expense Rent, in equal monthly installments in advance during each Calculation Year based upon a reasonable estimate by Landlord thereof, each such installment being due with installments of Base Rent. The Tax and Insurance Expense Rent for 2011 is estimated to be \$4.20 per square foot. Landlord and Tenant hereby acknowledge that such estimate is based on a partial assessment for property taxes for 2011.

(b) If the amounts paid by Tenant on account of Tax and Insurance Expense Rent for any given Calculation Year, based upon Landlord's estimate, are less than the actual amount thereof due from Tenant for such Calculation Year, then Tenant shall pay the deficiency to Landlord within thirty (30) days after written demand from Landlord. If the amounts paid by Tenant on account of Tax and Insurance Expense Rent for any given Calculation Year, based upon Landlord's estimate, are greater than the actual amount thereof due from Tenant for such Calculation Year, then the excess shall be credited against the Tax and Insurance Expense Rent due from Tenant during the immediately subsequent Calculation Year, except that in the event that such excess is paid by Tenant during the last year of the Term, then upon the expiration of the Term, Landlord shall pay Tenant the then applicable excess promptly after determination thereof.

(c) If the Building or any other building in the Project is not fully occupied during any given Calculation Year, the Tax and Insurance Expenses shall be equitably adjusted so that such of those expenses as constitute variable rather than fixed costs (as determined in accordance with sound accounting practices and principles) shall be adjusted to reflect vacancies in the Building or such other building by projecting such variable costs as if the Building or such other building were fully occupied throughout such Calculation Year; provided, however, that in no event shall Landlord by reason of any such adjustment be entitled to receive from all tenants of the Project more than 100% of the Tax and Insurance Expenses.

3.5 Intentionally Omitted.

3.6 Intentionally Omitted.

3.7 Interest and Late Charges. If Tenant fails to pay any Rent due under any provision of this Lease when due as herein provided, then such sum shall bear interest at the lesser of: (a) the highest legal rate and (b) ten percent (10%) per annum, calculated from the date due until paid, which interest shall be due and payable in monthly installments, in arrears, on the first day of the month following the date on which such Rent was due and on the first day of each calendar month thereafter, with the final

such monthly installment (or partial monthly installment, as the case may be) being due and payable on the date on which such Rent is paid. The payment of such interest shall not excuse or cure any Event of Default by Tenant under this Lease. In addition, if such payment is more than five (5) days late, then Tenant shall pay a late charge for processing of late payments, in the amount of four (4%) percent of the amount of the late payment, which late charge shall be due and payable on demand. Such interest and late charge shall be considered Additional Rent under the provisions hereof, the non-payment of which shall be considered an Event of Default on the part of Tenant.

ARTICLE IV COMMON AREAS; PARKING

4.1 Common Areas. Tenant, and its licensees, concessionaires, employees and customers shall have the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with Landlord, other tenants of the Project and other Persons entitled to use the Common Areas, subject to such reasonable rules and regulations as Landlord may from time to time prescribe. Tenant shall not interfere with the rights of other Persons to use the Common Areas. Landlord may from time to time close any portions of the Common Areas for such periods of time as Landlord may deem necessary for: (i) temporary use as a work area in connection with the Construction of buildings or other improvements within the Project or contiguous property; (ii) repairs or alterations in or to the Common Areas or to any utility facilities or distribution lines located within the Common Areas; (iii) preventing the public from obtaining prescriptive rights in or to the Common Areas; (iv) security reasons; or (v) doing and performing such other acts (whether similar or dissimilar to the foregoing) in, to and with respect to, the Common Areas as Landlord shall determine to be appropriate for the Project.

4.2 Parking. Tenant acknowledges that no parking will be provided by Landlord and that no parking rights are leased, licensed or otherwise conferred upon Tenant or any of its licensees, invitees, contractors, agents or employees by this Lease or Landlord. The parking facilities that serve the Project are currently owned and controlled by the City of Cincinnati and Hamilton County.

ARTICLE V TENANT COVENANTS

5.1 Use Generally.

(a) Tenant shall in good faith continuously throughout the Term of this Lease use and occupy the Premises only for the Permitted Use, and shall conduct and carry on in the entire Premises the type of business contemplated by the Permitted Use, using Tenant's Trade Name, and the Premises shall not be used for any other purpose. Notwithstanding anything to the contrary contained herein, Tenant shall not under any circumstance use the Premises for any of the uses listed on Exhibit "I" attached hereto. Tenant shall be in continuous use, occupancy and operation of the entire Premises, and shall conduct business in the Premises for the purposes herein stated and shall not vacate or abandon the Premises or allow the same to appear vacated or abandoned. Tenant shall operate its business in a dignified and first class manner. Tenant shall, at all times when the Premises are open for business with the public, keep the Premises properly equipped with fixtures, stocked with an adequate supply of merchandise and attended by adequate personnel.

(b) Tenant shall not sell, display or solicit sales in the Common Areas. Tenant shall not use or permit the use of any vending machines or public telephones on, at or about the Premises without the prior written consent of Landlord. Tenant shall not use or occupy the Premises, or permit the Premises to be used or occupied: (i) for any unlawful or immoral purpose; (ii) in violation of any Governmental Requirement, any Insurance Requirement, or the Declaration; (iii) in violation of any exclusive uses heretofore or hereafter granted to any tenant in the Project (provided, however, that in no event will the foregoing be deemed to prohibit the Permitted Use if the Premises are continuously operated under the Trade Name and in compliance with the other provisions of this Lease); (iv) in any manner that would cause or would be likely to cause damage to the Project; (v) in any manner that would constitute a public or private nuisance; (vi) in any manner that would invalidate any insurance policy maintained by Landlord

or Tenant with respect to the Project or Premises, or adversely affect the ability of Landlord or Tenant to obtain such insurance; (vii) to do anything that would tend to injure the reputation of the Project; or (viii) in any manner that any of the rates for any insurance carried by Landlord shall thereby be increased, unless Tenant shall pay to Landlord an amount equal to any such increase in rates, such payment to be made promptly on demand as each premium which shall include such increase shall become due and payable.

5.2 Compliance with Governmental Requirements. In connection with the use and occupancy of the Premises and any initial improvement or subsequent alteration thereof, Tenant shall, at Tenant's expense, comply with all Governmental Requirements of all Governmental Authorities having jurisdiction with respect thereto, including without limitation the Americans with Disabilities Act, and with all Insurance Requirements.

5.3 Business Operations. Tenant shall not, nor shall Tenant at any time permit any occupant of the Premises to: (i) conduct or permit any fire, bankruptcy or auction sale (whether real or fictitious) unless directed by order of a court of bankruptcy or of competent jurisdiction, or conduct or permit any fictitious "Going Out of Business" sale; (ii) represent or advertise that it regularly or customarily sells merchandise at "manufacturers", "distributor's", or "wholesale", "warehouse", "fire sale", "bankruptcy sale", or similar prices or other than at retail prices; (iii) except as specifically set forth below with respect to the Outdoor Dining Area, use, or permit to be used, the malls or sidewalks adjacent to such Premises, or any other area outside the Premises for the sale or display of any merchandise or for any other business, occupation or undertaking, or for outdoor public meetings or entertainment (except for promotional activities in cooperation with the management of the Project or an association of merchants within the Project); (iv) use or permit to be used, any sound broadcasting or amplifying device which can be heard outside of the Premises and the Outdoor Dining Area; (v) operate or cause to be operated any "elephant trains" or similar transportation devices; (vi) use or permit to be used any portion of the Premises for living quarters, sleeping apartments or lodging rooms; (vii) use the Premises for or conduct therein activities, the purpose for which is not included within the Permitted Use; or (viii) place any sound broadcasting or amplifying device on the roof or outside of the Premises and locations approved by Landlord within the Outdoor Dining Area; or (ix) place any antennae, awning, equipment or other projection on the exterior of the Premises. Tenant: (1) shall keep all mechanical apparatus free of vibration or noise which may be transmitted beyond the confines of the Premises; (2) shall not cause or permit odors to emanate from the Premises; (3) shall not load or unload or permit the loading or unloading of merchandise, supplies or other property except within the area designated by Landlord from time to time; and (4) shall not permit the parking or standing, outside of such designated area, of trucks, trailers or other vehicles or equipment engaged in such loading or unloading.

Notwithstanding anything to the contrary in this Section 5.3, and subject to the Declaration (including without limitation Section 3.9 and Exhibit L of the Specific Declaration and Section 5.4 of the General Declaration) and any additional rules or regulations concerning the use of the Project and/or the Retail Facility, Tenant shall be permitted to use that portion of the Retail Facility adjacent to the Premises in the location designated on Exhibit "K" solely for outdoor seating in connection with the Permitted Use (the "Outdoor Dining Area"), provided (a) Tenant shall clean the Outdoor Dining Area and maintain it at all times in an orderly and sanitary First Class (as defined in the Declaration) condition; (b) all outdoor furniture at the Outdoor Dining Area shall be First Class (as defined in the Declaration); (c) Tenant shall not alter the landscapes or hardscapes within the Outdoor Dining Area in any way; (d) in the event that there occurs a Taking of the Outdoor Dining Area (or any portion thereof), or a Taking affects in any way the Outdoor Dining Area (or any portion thereof) or a widening, alteration or dedication of any road or street that affects in any way the Outdoor Dining Area (or any portion thereof), then Tenant shall not be permitted to use the Outdoor Dining Area and the terms of this Section 5.3 which provided for Tenant's right to use the Outdoor Dining Area shall be null and void and of no further force or effect; (e) Tenant obtains, at Tenant's sole cost and expense, all permits, licenses and approvals required for the construction and use of the Outdoor Dining Area; (f) the Outdoor Dining Area does not reduce the retailable floor area of the Project or any other entitlements or land use rights the Project would otherwise benefit from; and (g) Tenant shall not construct or permit the construction of Improvements on, or place or permit the placement of any property on, the portion of Lot 26B-1A depicted as "Use Restriction Area" in Exhibit

L to the Specific Declaration, being an 18 inch wide strip situated immediately northerly of, and extending along the length of, the Sidewalk Easement Area (as defined in the Specific Declaration), other than tables, chairs, hostess stations, waitress stations, awnings or canopies, heating implements and other items customarily used in connection with outdoor eating and/or drinking areas and any fixed rail or fencing required by Governmental Requirements applicable to outdoor eating and/or drinking areas.

Notwithstanding the foregoing, but subject to applicable restrictions, Landlord will not prohibit Tenant from playing reasonable levels of music in Tenant's Outdoor Dining Area, so long as such music cannot be heard within the residential component of the Project (assuming all windows, doors and other openings are closed) and does not otherwise constitute a nuisance.

5.4 Maintenance. Tenant: (i) shall keep clean the inside and outside of all glass in the doors and windows of the Premises; (ii) shall replace promptly at its own expense with glass of like kind and quality any plate or window glass; (iii) shall replace doors or door hardware of the Premises which may for any reason become cracked or broken, (iv) shall maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; (v) shall not permit undue accumulation of garbage, trash, rubbish or other refuse in the Premises; and (vi) shall keep such refuse in proper containers inside the Premises until such time as same is called for to be removed. Tenant shall maintain plate glass insurance reasonably satisfactory to Landlord if any plate glass is contained in the store front of the Premises.

5.5 Hours of Operation. Tenant shall keep the Premises open for business with the public during all hours when the Retail Facility generally is open for business with the public. Unless the hours during which the Retail Facility shall be open for business with the public shall have been otherwise determined by Landlord, Tenant shall keep the Premises open for business with the public on each calendar day at least during the hours of 11:00 a.m. to 2:00 a.m. (or, if applicable law prohibits the sale of alcohol by all holders of the liquor license held by Tenant after an earlier hour, such earlier hour), seven days per week, or such extensions of the minimum as shall be determined by Landlord.

In no event shall any Tenant be open for business less than 30 hours in any given week. Notwithstanding the provisions of this Section 5.5, Tenant shall not be required to keep its Premises open for business at any time prohibited by applicable Governmental Requirement, and Tenant shall be permitted to close the Premises during reasonable periods for repairing, cleaning or decorating the Premises, with written permission from Landlord.

5.6 Failure to Open or Operate. In the event that at any time during the Term, Tenant should vacate, abandon, or desert the Premises or cease operating its business therein in accordance with Section 5.1 and Section 5.5, then, in any such event, the same shall constitute an Event of Default under this Lease, and Landlord shall have, in addition to all rights and remedies provided under Section 14.3, the right to collect not only the Base Rent and other Rent otherwise provided for herein, but also Additional Rent at the rate of One Thousand and 00/100 Dollars (\$1,000.00) per day for each and every day that Tenant shall fail to do business within the Premises in accordance with the terms of Section 5.1 and Section 5.5; provided, however, that such Additional Rent shall not accrue during any period when the Premises are rendered untenable by reason of Casualty or other cause beyond Tenant's control and not resulting from the intentional or negligent acts or omissions of Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or the servants, agents, employees, invitees, licensees, or concessionaires of Tenant's assignees or sublessees, and the failure to operate during such period shall not be deemed an Event of Default hereunder. Said Additional Rent is intended to contribute to the expense of monitoring the occupancy of the Premises and shall not be deemed a penalty or liquidated damages.

5.7 Displays. If Tenant is engaged in retail sales, then Tenant shall install and maintain at all times tasteful displays of merchandise in display windows in the Premises. Tenant shall light any electric signs and keep the display windows in the Premises well lighted during such times as the level of light outside the Premises is less than ten (10) foot candles of natural light, except that Tenant shall not be required to

keep its display window electric signs and windows lighted more than one (1) hour following Tenant's closing hour.

5.8 Rules and Regulations. The Rules and Regulations are hereby made a part of this Lease, and Tenant agrees to comply with and observe the same. Tenant's failure to keep and observe the Rules and Regulations shall constitute a breach of the terms of this Lease in the manner as if the same were contained herein as covenants. Landlord reserves the right from time to time to amend or supplement the Rules and Regulations and to adopt and promulgate additional Rules and Regulations applicable to the Premises, Retail Facility or Project. Notice of such additional Rules and Regulations, and amendments and supplements, if any, shall be given to Tenant and Tenant agrees thereupon to comply with and observe all such Rules and Regulations, and amendments thereto and supplements thereof, provided the same shall apply uniformly to all tenants of the Retail Facility located in the Building.

5.9 Payment of Taxes.

(a) Tenant shall be liable for and shall pay all taxes levied or imposed upon or assessed against all Tenant's Work, all Tenant Personality and all Alterations. If any such taxes for which Tenant is liable are levied or imposed upon or assessed against Landlord or Landlord's property and if Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of any such items and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord on demand that part of such taxes for which Tenant is liable hereunder.

(b) Tenant shall be liable for and shall pay any sales, use or rent tax or other tax imposed upon Rent or other payments under this Lease or imposed upon Landlord based upon Rent or other payments by Tenant to Landlord; provided, however, that Tenant shall not be required to pay any net income tax of Landlord.

5.10 Restriction on Tenant.

(a) Tenant agrees that for as long as this Lease shall remain in effect, Tenant and, if Tenant is not a natural person, its members, partners, officers, directors, shareholders (or similar entities and persons) or any affiliates of any of the foregoing, shall not directly or indirectly operate, manage, or have any interest in any business (unless such business is already in operation on the date of this Lease) which is similar to or in competition with the Permitted Use ("Competing Store") within a radius of one (1) mile from any point on the perimeter of the Project (the "Restricted Area").

(b) If Tenant shall violate the foregoing covenant, Landlord may, at its option, without limiting Landlord's other remedies, effective as of the date such Competing Store opens for business within the Restricted Area, pursue any and/or all of the following remedies in its sole and absolute discretion: (i) include one hundred percent (100%) of the Gross Sales of the Competing Store(s) in the Gross Sales generated from the Premises for the purpose of computing Percentage Rent due hereunder, or (ii) increase Tenant's Base Rent to the average of the annual "effective" rent (that is, aggregate of Base Rent and Percentage Rent) paid by Tenant to Landlord during the immediately preceding two (2) Lease Years, or (iii) increase Tenant's Base Rent then in effect as well as any future increases in Base Rent by fifty percent (50%).

5.11 Special Restaurant Provisions.

(a) Tenant acknowledges that its business may generate odors and fumes that may be deemed objectionable by other persons. Accordingly, Tenant, upon taking possession of the Premises, shall use its best efforts to seal the Premises so that the fumes do not migrate into adjoining suites and to provide additional equipment to vent the fumes out of the Premises via the shaft constructed for that purpose by Landlord pursuant to the TCM (the "Exhaust Shaft"). Such equipment shall be designed by an engineer meeting Landlord's written approval, such approval not to be unreasonably withheld, and shall be installed in accordance with plans and specifications approved in advance by Landlord (which such approval may be granted or withheld in Landlord's sole discretion). Any roof or ceiling penetrations

required to install such equipment must be performed by Landlord's roofer, provided such roofer does not charge Tenant more than it charges other similarly situated customers. Tenant shall employ Landlord's roofer to do such work as Tenant's own agent and contractor and the work shall be performed so as not to adversely affect Landlord's roofing guarantee. Tenant shall, and does hereby agree to, indemnify and hold harmless Landlord, the Landlord Representatives and any other occupants of the Project from and against any Claims (defined below) resulting from injury or damage to person or property arising from such construction or roof leaks caused thereby. Furthermore, Tenant shall, at its sole cost and expense, promptly make any repairs to the roof caused by the installation of such equipment. In addition, if Landlord receives any complaints about fumes or odors from other tenants or occupants of the Project because of fumes or odors migrating into adjoining suites from the Premises, but not fumes or odors drawn into such suites from the fresh air replenishment of their installed ventilation equipment, Landlord shall provide notice thereof to Tenant and Tenant, at Tenant's sole cost and expense, shall immediately take such commercially reasonable corrective actions as are necessary to remedy the odor/fume problem and resolve such complaints. Such corrective actions shall include, but not be limited to, adding additional commercially reasonable ventilation and filter systems (but will not include any requirement that Tenant install any scrubbers or precipitators) to prevent such odors and fumes from migrating into adjoining suites. If modifications to the Exhaust Shaft are required to comply with the foregoing provisions, such modifications may be performed by Landlord (but not by Tenant, unless Landlord so elects in Landlord's sole, subjective discretion), but at Tenant's sole cost and expense and subject to Tenant's indemnity obligation set forth above and elsewhere in this Lease.

(b) Tenant covenants and agrees that, in constructing the Premises it shall do the following: (i) provide and install an approved membrane water proofing between the slab and Tenant's floor covering material. Such water proofing membrane shall be installed in a manner which will not permit the passage of water through the floor or to any adjacent premises; (ii) Insulate the walls of the Premises in such a manner that it will substantially prevent sound, heat and odors from emanating from the Premises into adjoining stores or portions of the Project; (iii) locate all roof openings, including necessary curbs and flashings to accommodate the installation of Tenant's leasehold improvements, as directed by Landlord; and (iv) ensure that the storefront and infill slab are watertight. Tenant agrees that it will use Landlord's approved roofing contractor for such work (provided such roofer does not charge Tenant more than it charges other similarly-situated customers) and shall be responsible for any damage arising out of such work.

(c) In order to eliminate the problem of sewer back-ups and health hazards, Tenant shall use grease traps. Tenant must use a grease trap provided by Landlord for one or more tenants of the Project. In such event, Landlord must maintain the grease trap in good working order and condition. Tenant must reimburse Landlord for its share of any costs and expenses incurred by Landlord in connection with the maintenance, repair, operation and replacement of the grease trap. Tenant's share of such costs and expenses will be calculated based upon Landlord's good faith estimate of Tenant's usage of such grease trap as a proportion of Landlord's good faith estimate of total usage thereof. In addition, to the extent any such costs and expenses result from Tenant's misuse of the grease trap or related plumbing systems, then Tenant must pay, as Additional Rent, all such costs and expenses.

(d) A regular and periodic pest extermination program approved by Landlord must be instituted by Tenant, at Tenant's sole cost and expense. In addition to any reasonable requirements of Landlord, such program must provide for regular inspection for pests and for extermination of any pests discovered in connection therewith and must provide for routine preventive extermination measures as are generally employed by other restaurant tenants of first-class shopping centers in the City of Cincinnati, Ohio. Tenant must provide Landlord with a copy of its extermination contract upon the Rent Commencement Date, upon the renewal or replacement of such contract and at Landlord's request.

(e) Tenant must maintain the highest rating issued for restaurants by the local health department.

5.12 Exclusive Use. So long as the originally named Tenant or an assignee or sublessee pursuant to a transfer not requiring Landlord's consent is continuously and without interruption conducting business

operations within the entire Premises for the Permitted Use of the Premises and provided that there has not occurred an Event of Default, except for any premises having a floor area of five thousand (5,000) square feet or less and any lease, license or concession agreement executed prior to the date of this Lease and any amendment, modification, extension, expansion, renewal or replacement thereof, Landlord shall not, during the initial Term, lease or rent any other premises within the Project to a tenant or occupant who will be permitted under the terms of its lease to operate a country-music-themed restaurant. In the event of a breach by Landlord of its obligations contained in this Section, which breach is not cured by Landlord within sixty (60) days after written notice from Tenant (plus such additional time as may be required to cure such violation, provided Landlord commences such cure within such sixty (60)-day period and thereafter diligently pursues such cure to completion), Tenant shall have the right, as its sole and exclusive remedy, to: (1) bring an action for specific performance and/or obtaining a temporary or permanent injunction against Landlord with respect to such uncured breach; or (2) terminate the Lease effective thirty (30) days after Landlord has failed to cure. In the event of a violation of the exclusive rights set forth in this Section by a third party within the Project, Landlord shall be deemed to have satisfied its obligations hereunder so long as it uses commercially reasonable efforts to enforce Tenant's exclusive rights. No breach of this Section shall be deemed to have arisen until such time as Landlord has received written notice from Tenant of an alleged violation and Landlord has failed to remedy the violation within the time period set forth hereinabove. In the event any third party and/or governmental body, agency, branch, commission, authority, subdivision, bureau or department shall commence any action or proceeding against Landlord before any court of competent jurisdiction or administrative tribunal (collectively referred to as an "Action") arising from the restriction set forth in this Section, and it is finally determined in such Action that the restriction set forth in this Section is in violation of law, then the restriction set forth in this Section shall be automatically cancelled and revoked. Landlord agrees to notify Tenant of any Action commenced as stated above and shall permit Tenant to defend such Action, provided (i) Tenant agrees to hold Landlord and any Landlord's lender harmless and indemnify Landlord and any Landlord's lender for all costs, expenses, damages and judgments which they might incur, expend or be liable for in defending the legality and enforceability of the restriction set forth in this Section, and (ii) Landlord receives adequate reasonable assurance of Tenant's financial willingness and ability to hold Landlord and any Landlord's lender harmless and indemnify Landlord or any Landlord's lender. Within fourteen (14) days after Landlord notifies Tenant of the institution of the Action, Tenant, at its sole option, may elect in writing by notice to Landlord, to either waive the restriction set forth in this Section with respect to the Action, or to defend the Action. It is understood and agreed that Landlord's defense may be undertaken by counsel selected by Tenant, but approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be deemed in breach of this Section so long as Landlord has commenced efforts to protect Tenant's rights hereunder as set forth above.

ARTICLE VI MAINTENANCE AND REPAIR OF PREMISES, ALTERATIONS AND LANDLORD'S RIGHT OF ACCESS

6.1 Repairs by Landlord. Landlord shall keep in repair only (a) the foundation, the roof and the exterior walls of the Premises (except plate glass, doors, door closures, door frames, store fronts, windows and window frames located in exterior building walls); and (b) the utility pipes, lines, wires, conduits and facilities which serve the Premises and which are located outside the Premises, including those that are located outside the Premises and that exclusively serve the Premises (the "Exterior Tenant Utility Facilities") in good repair (provided that costs and expenses in connection with the Exterior Tenant Utility Facilities shall be paid solely by Tenant as Additional Rent). Within fourteen (14) days after demand for payment by Landlord, Tenant shall pay, as Additional Rent, the cost of any such repairs occasioned by the act or neglect of Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or the servants, agents, employees, invitees, licensees, or concessionaires of Tenant's assignees or sublessees, and the cost to repair any damage caused by or as a result of Tenant's occupancy of Premises, or any damage caused by break-in, burglary, or other similar acts in or to the Premises. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give prompt written notice

thereof to Landlord; and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after the giving of such written notice. If Landlord elects by giving notice thereof to Tenant, Tenant shall, within a reasonable time and at Tenant's expense, make any repairs that Landlord is required to make at Tenant's expense under this Section 6.1, in which event Tenant shall not be required to pay the cost thereof to Landlord as Additional Rent. Except as expressly set forth in this Section 6.1, Landlord shall have no duty or obligation whatsoever for the maintenance, replacement or repair of the Premises, and Landlord shall have no obligation to inspect the Premises.

6.2 Repairs by Tenant. Tenant shall, at its sole cost and expense, keep the Premises in a safe, slightly, serviceable and first-class condition and free from any infestation by insects, rodents, or other pests, and, except as specifically provided in Section 6.1, make all needed maintenance, repairs, and replacements of, in or to the Premises, including without limitation all maintenance, repairs, and replacements of, in or to: (a) all exterior and interior portion of all doors, door closures, windows, window frames, plate glass, door closures, door frames and store fronts; (b) all plumbing, sewage, electrical and other utility pipes, lines, wires, conduits and facilities serving the Premises which are located within the Premises; (c) all fixtures within the Premises; (d) all sprinkler systems serving the Premises; (e) all interior walls, floors, and ceilings; (f) all Tenant's Work; (g) all repairs, replacements, or alterations required by any Governmental Requirement or Governmental Authority including without limitation the Americans with Disabilities Act; (h) all heating, ventilating, and air conditioning equipment, facilities and systems serving the Premises and (i) all necessary repairs and replacements of Tenant's trade fixtures required for the proper conduct and operation of Tenant's business. If at any time and from time to time during the Term, Tenant shall fail to make any maintenance, repairs, or replacements of, in and to the Premises as required in this Lease, Landlord shall have the right, but not the obligation, to enter the Premises and to make such maintenance, repairs, and replacements for and on behalf of Tenant, and all sums expended by Landlord for such maintenance, repairs, and replacements shall be deemed to be Additional Rent and shall be due and payable by Tenant to Landlord on demand. Tenant shall keep in force a standard maintenance agreement on all heating, ventilating, and air conditioning systems serving the Premises with a reputable heating and air conditioning service organization which shall be subject to Landlord's approval and shall annually provide a copy of said maintenance agreement to Landlord on or before the first day of the applicable Lease Year, in advance, for Landlord's approval.

6.3 Alterations.

(a) Tenant shall not make any Alterations to the Premises, or any repairs required of Landlord under Section 6.1, without the prior written consent of Landlord, except for the installation of unattached moveable fixtures that: (a) may be installed without drilling, cutting, or in any way defacing the Premises or any part thereof; (b) cost less than Fifteen Thousand and 00/100ths Dollars (\$15,000.00) per project to install; (c) do not change or affect the architectural theme of the Premises or the Project; (d) could not reasonably be expected to affect the structure of the Premises or the Project or any of the electrical, plumbing, heating, ventilating and air conditioning, or other mechanical systems of the Premises or the Project; (e) do not increase the occupancy of the Project or the Premises in any material respect beyond its theretofore intended capacity; and (f) do not create a demand for extraordinary services or utilities. All contractors and subcontractors who or which perform any work on behalf of Tenant (including without limitation in connection with any Alterations or Tenant's Work) shall be subject to Landlord's prior approval. In addition, prior to the commencement of such work, Tenant, if required by Landlord, shall secure, at Tenant's expense, performance, labor and materials bonds for the full cost of such work that are satisfactory to Landlord and "special form" builder's risk insurance for the full cost of such work naming Tenant as the named insured and naming Landlord as an additional insured and loss payee and that is otherwise satisfactory to Landlord. All Alterations must be designed to a standard substantially comparable in quality to other "first class" or "class A" buildings in the downtown Cincinnati, Ohio submarket or better. All materials used in any Alterations must be of high quality and durable so as to result in appreciation in the value of the Premises over time. All Alterations made in and to the Premises and all floor covering that is cemented or adhesively fixed to the floor and all fixtures (other than trade fixtures) which are installed in the Premises shall, unless Landlord otherwise notifies Tenant within thirty (30) days after Tenant's vacation of the Premises following the Expiration Date or earlier termination of this Lease, remain in and be surrendered with the Premises and shall, unless Landlord otherwise

notifies Tenant within thirty (30) days after Tenant's vacation of the Premises following the Expiration Date or earlier termination of this Lease, become the property of Landlord on the Expiration Date or on the date of any earlier termination of this Lease. So long as no Event of Default has occurred, Tenant shall have the right to remove its trade fixtures from the Premises, provided that Tenant shall repair and restore any damage to the Premises caused or occasioned by such removal. If any Alteration impacts the structure or mechanical systems of the Premises or the Project, or if Tenant otherwise has them prepared, Tenant shall deliver "as-built" plans to Landlord upon completion. In addition and regardless of whether Landlord's consent has been obtained, prior to carrying out any Alterations that may affect the structure of the Building, Tenant must perform, during hours and under other conditions designated by Landlord, an X-Ray of the Building at Tenant's sole cost and expense. Tenant must reimburse Landlord for all costs and expenses incurred by Landlord in connection with Tenant's Alterations or any Alterations proposed by Tenant, including without limitation, all review costs, costs of supervising the Alterations, costs of temporary utilities, costs of waste disposal services and costs incurred in making repairs and replacements needed as a result of such Alterations. Without limiting any other bases on which Landlord may condition its consent to an Alteration, Landlord may condition such consent on Tenant providing satisfactory evidence of compliance with the provisions of this Lease, on Tenant paying all amounts due hereunder or estimated by Landlord (subject to reconciliation when actual costs are determined) to become due as a result of Tenant's proposed Alterations, and on Tenant or its contractor posting a security deposit to secure Tenant's Alterations-related obligations. Any such security deposit will be held in accordance with Section 3.5, except as otherwise expressly provided in this Section 6.3 or the TCM.

(b) All Alterations shall be designed and constructed with consideration given to implementation of green/sustainable design elements, which may include concepts set forth in LEED Green Building Rating System For Core & Shell Development, Version 2.0 (July 2006), LEED Green Building Rating System for New Construction & Major Renovations, Version 2.2, (October 2005), and LEED-ND Application Guide for Multiple Buildings and On-Campus Building Projects, Versions 2.1 and 2.2, (October 2005), as published by the U.S. Green Building Council (collectively, the "LEED Guidance"). In addition, if applicable, Tenant shall coordinate with the Metropolitan Sewer District of Greater Cincinnati regarding storm water management requirements and, where feasible, attempt to utilize "green infrastructure" elements and best management practices. At such time during the design of its Alterations as Landlord requests, Tenant shall report to Landlord (for use by the Public Parties (as defined in the Declaration)) its consideration of such green/sustainable design elements. Such report shall identify the elements of the LEED Guidance or other green/sustainable design elements that have been considered or incorporated into such Alterations. **FOR AVOIDANCE OF DOUBT, TENANT IS NOT REQUIRED TO INCORPORATE THE LEED GUIDANCE OR OTHER GREEN/SUSTAINABLE DESIGN ELEMENTS IN ITS ALTERATIONS OR TO SEEK OR OBTAIN ANY GREEN/SUSTAINABLE DESIGN CERTIFICATION FOR ITS ALTERATIONS, BUT ONLY TO REPORT CONSIDERATION THEREOF, AS APPROPRIATE.**

6.4 Work Standards. All Tenant's Work and all repairs and Alterations performed by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all Governmental Requirements, and at such times and in such manner as will cause a minimum of interference with other Construction in progress and with the transaction of business in the Project. Whenever Tenant proposes to do any Construction work within the Premises, Tenant shall first furnish to Landlord plans and specifications covering such work in such detail as Landlord may reasonably request. Such plans and specifications shall comply with such requirements as Landlord may from time to time prescribe for Construction within the Project. In no event shall any Construction work be commenced within the Premises without Landlord's prior written approval of such plans and specifications. Tenant shall perform or cause Tenant's contractors to perform all work in the making and/or installation of any repairs, alterations or improvements in a manner so as to avoid any labor dispute that causes or is likely to cause stoppage or impairment of work or delivery services or any other services in the Project. If there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall immediately undertake such reasonable action as may be necessary to eliminate such dispute or potential dispute, including, but not limited to (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking an injunction in the event of a breach of contract between Tenant and any of Tenant's contractors, and (c) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

6.5 Right of Entry. Landlord shall have the right, but not the duty, to enter upon the Premises at any time with twenty-four (24) hours notice (or, in the event of an emergency, such notice as is practicable, if any) to Tenant for the purpose of inspecting the same, or of making repairs to the Premises, or of making repairs, alterations, or additions to adjacent property, or of showing the Premises to lenders, prospective lenders, purchasers, prospective purchasers or tenants.

6.6 No Liens. Tenant shall not suffer or permit any materialmen's, mechanics', artisans' or other liens to be filed or placed or exist against the Project, or Tenant's Interest in Premises by reason of work, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant, and nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvements, alterations or repairs of or to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of a materialmen's, mechanics' artisans' or other lien against the Premises. If any such lien should, at any time, be filed, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same. If Tenant shall fail to discharge such lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by a deposit in court or by posting a bond. Any amount paid by Landlord for any of the aforesaid purposes, or for the satisfaction of any other lien not caused by Landlord, and all reasonable expenses of Landlord in defending any such action or in procuring the discharge of such lien, shall be deemed Additional Rent hereunder and shall be due and payable by Tenant to Landlord on demand.

6.7 Non-Liability of Landlord. Landlord shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused Tenant or Tenant's assignees, sublessees, customers, invitees, employees, licensees or concessionaires in the Premises on account of Landlord's performance of any repair, maintenance or replacement in the Premises or any other work therein pursuant to Landlord's rights or obligations under this Lease so long as such work is being conducted by Landlord in accordance with the terms of this Lease and without gross negligence or gross disregard for Tenant's business operations.

6.8 Environmental Covenants and Indemnities.

(a) Tenant represents, warrants, covenants and agrees that: (i) neither Tenant nor any of Tenant's agents, employees, contractors, invitees, assignees or sublessees shall cause any Hazardous Materials to be brought upon, kept, stored or used in or on the Premises or any other portion of Project without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion, provided that Landlord may not unreasonably withhold its consent to the incidental storage and use of Hazardous Material in the Premises in a manner reasonably necessary or appropriate to Tenant's business and in a manner that fully complies with all Environmental Laws, other Governmental Requirements, and Insurance Requirements, and that would not substantially increase the risk of Casualty to the Premises or the Project; (ii) neither Tenant nor any of Tenant's agents, employees, contractors, invitees, assignees or sublessees shall cause any Hazardous Materials to be disposed of, or released, in, on or from the Premises or any other portion of the Project; (iii) Tenant shall carry on its business and operations at the Premises in compliance in all respects with, and will remain in compliance in all respects with, all applicable Environmental Laws; (iv) Tenant shall not create or permit to be created any lien, encumbrance or charge against the Premises for the costs of any response, removal or remedial action or clean-up of Hazardous Materials; (v) Tenant shall, after obtaining Landlord's prior written approval, promptly conduct and complete all investigations, studies, sampling and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises in accordance with all applicable Environmental Laws and in a manner and to a level satisfactory to Landlord in its sole discretion, but in no event to a level and in a manner less than that which complies with all Environmental Laws and does not limit any future uses of the Premises or the

Project or require the recording of any deed restriction or notice regarding the Premises or the Project; (vi) Tenant shall promptly notify Landlord in writing if Tenant receives any notice, letter, citation, order, warning, complaint, injury, claim or demand that (A) Tenant has violated, or is about to violate, any Environmental Law; (B) there has been a Release or there is a threat of Release, of Hazardous Materials at or from the Premises, (C) Tenant may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a Release of Hazardous Materials, or (D) the Premises are subject to a lien, encumbrance or other charge in favor of any Governmental Authority for any liability, cost or damages under any Environmental Law; and (vii) it shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture, or Release of Hazardous Materials on the Premises or Project. Tenant shall perform the work described in clause (v), above, at any time during the Term of the Lease upon written request by Landlord or, in the absence of a specific request by Landlord, before Tenant's right to possession of the Premises terminates or expires. If Tenant fails to perform such work within the time period specified by Landlord or before Tenant's right to possession terminates or expires (whichever is earlier), Landlord may at its discretion, and without waiving any other remedy available under this Lease or at law or equity (including without limitation an action to compel Tenant to perform such work), perform such work at Tenant's cost. Tenant shall pay all costs incurred by Landlord in performing such work within ten (10) days after Landlord's request therefor. Such work performed by Landlord is on behalf of Tenant and Tenant remains the owner, generator, operator, transporter, and/or arranger of the Hazardous Materials for purposes of Environmental Laws. Tenant agrees not to enter into any agreement with any person, including without limitation any governmental authority, regarding the removal of Hazardous Materials that have been disposed of or otherwise released onto or from the Premises or the Project without the written approval of the Landlord.

(b) Unless resulting or arising solely from the negligent or willful acts or omissions of Landlord or Landlord's employees or agents, Tenant shall, and does hereby, indemnify and hold harmless Landlord and each of Landlord's partners, members, officers, directors, shareholders, employees, agents, successors and assigns, from and against any and all Claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Landlord, or any other Person described above, the Project, the Retail Facility or the Premises for, with respect to, or as a result of the following: (i) the presence in, on, over or under, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Premises of any Hazardous Materials prior to the Expiration Date or the date of any earlier termination of this Lease; (ii) the violation of any Environmental Laws relating to or affecting the Premises prior to the Expiration Date or the date of any earlier termination of this Lease (including, without limitation, the violation of any notification, investigation or remediation obligations pursuant to any Environmental Laws); (iii) the violation of any of the Environmental Laws prior to the Expiration Date or earlier date of termination of this Lease in connection with any other property owned by Tenant, which violation gives or may give rise to any rights whatsoever in any party with respect to the Premises by virtue of any of the Environmental Laws; (iv) any warranty or representation made by Tenant in this Section 6.8 is or becomes false or untrue in any material respect; or (v) the violation or breach of, or the failure of Tenant to fully and completely keep, observe, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, provision or restriction of this Section 6.8.

(c) Landlord, with twenty-four (24) hours notice (or, in the case of an emergency, such notice as is practicable, if any), shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Laws, its obligations under this Section 6.8, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Law or provision of this Lease, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspections and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

(d) In addition to all other rights and remedies available to Landlord under this Lease or otherwise, Landlord may, in the event of a breach of the requirements of this Section 6.8 that is not cured

within thirty (30) days following notice of such breach, require Tenant to provide financial assurance (such as insurance, escrow of funds or third party guarantee) in an amount and form satisfactory to Landlord. The requirements of this Section 6.8 are in addition to and not in lieu of any other provision in the Lease.

(e) The provisions of this Section 6.8 shall survive the Expiration Date, or the date of any earlier termination of this Lease. The provisions of this Section 6.8 are not intended to limit the generality of any of the other provisions of this Lease, including, without limitation, the provisions of Sections 5.2 and 9.1.

ARTICLE VII SIGNS, STORE FRONTS AND ROOF

7.1 Tenant Covenants. Tenant shall not, without the prior written consent of Landlord: (a) paint, decorate or make any changes to the store front of the Premises; (b) install any exterior lighting, awning, or protrusions, or any exterior signs, advertising matter, decoration or painting; (c) install any drapes, blinds, shades or other coverings on exterior windows and doors; (d) affix any window or door lettering, sign decoration or advertising matter to any window or door glass; or (e) erect or install any signs, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type in store windows. Tenant shall, after obtaining Landlord's prior written approval, install, at Tenant's expense, an exterior sign conforming to the general appearance of other signs in the Retail Facility located in the Building and the Sign Criteria and the Declaration. Landlord shall have the right to withhold its consent to any proposed signage even if such signage complies with applicable laws, the Sign Criteria and the Declaration. Subject to approval by the City of Cincinnati, Landlord hereby approves Tenant's signage as depicted on Exhibit "H-1" attached to this lease and incorporated herein by reference. Tenant shall at all times keep all signs in good condition, in proper operating order and in accordance with all applicable Governmental Requirements. Tenant shall not have the right to use or install any fixtures or improvements on the roof of the Building, and the use of such roof is reserved to Landlord. Landlord may install upon the roof of the Building equipment, signs, antenna, displays, and other objects and may construct additional stories above or adjacent to the Premises.

7.2 Changes in Sign Criteria. If Landlord should undertake any remodeling or renovation of the Project or the Retail Facility which requires modification of Tenant's signs, then Tenant shall, if required by Landlord, conform to the standard Sign Criteria used for such remodeling or renovation.

ARTICLE VIII UTILITIES

8.1 Tenant's Facilities. Tenant agrees to cause to be provided to the Premises those certain utility facilities necessary for Tenant to operate in the Premises in accordance with Section 5.1 and Section 5.5 at Tenant's sole cost and expense.

8.2 Tenant Responsibility. Tenant shall, at its sole cost and expense, install Landlord-approved submeters for electricity and water utility service to the Premises. Except as provided below, Tenant shall pay as and when due, directly to the public utility or other provider thereof, all charges for all gas and other utilities and services furnished to the Premises or otherwise consumed by Tenant, including, without limitation, electricity, water, sewer, telephone, gas (where applicable), and chilled water service. Tenant shall pay to Landlord all charges for all electricity, water and condenser water (including costs and expenses for utilities and operating, maintenance, repair and replacement of the cooling tower and distribution conduits and facilities) services furnished to the Premises based upon Landlord's readings of the meters or sub-meters, as applicable, for such services. In the event that, at any time during the Term, Tenant shall fail to promptly pay any of the foregoing charges, Landlord shall have the right, but not the obligation, to pay such charge or charges for and on behalf of Tenant and such amounts so paid shall be deemed to be Additional Rent hereunder and shall be due and payable by Tenant to Landlord on demand.

8.3 Liability of Landlord. Landlord shall be liable in the event of any interruption in or the curtailment of the supply of any utilities or services to the Premises for non-payment if Tenant has paid Landlord for the utilities and services and Landlord has failed to pay the utility or service provider, but Landlord will not otherwise be liable for any such interruption or curtailment.

8.4 Tenant's Equipment. Tenant shall not install any equipment which will exceed or overload the capacity of any utility facilities serving the Premises. If any equipment installed by Tenant shall require additional utility facilities, the same shall be installed at Tenant's sole cost and expense in accordance with plans and specifications to be approved in writing by Landlord.

ARTICLE IX INDEMNITY AND NON-LIABILITY

9.1 Indemnity.

(a) Subject to **Section 9.3**, Tenant shall, and does hereby indemnify, protect, defend and save harmless Landlord, and its partners, members, officers, directors, shareholders, employees, agents, property managers, successors and assigns (collectively, the "Landlord Representatives"), from and against any and all legal actions, penalties, proceedings, disbursements, assessments, liabilities, damages, losses, costs, expenses (including reasonable attorney and expert fees and expenses incurred in investigating, defending or prosecuting any litigation, claim or proceeding), causes of action, suits, claims, demands and judgments (collectively, "Claims"), of any kind or nature whatsoever (including, without limitation, (i) any loss of life, bodily injury or personal injury to any Persons whomsoever, (ii) any loss, damage or destruction of or to any property of any kind or nature whatsoever owned, leased, or controlled by any Persons whomsoever), in any manner arising out of, by reason of or in connection with: (1) the condition, maintenance, use or occupancy of the Premises; (2) any occurrence in the Premises; (3) the act, omission, or neglect in or on the Premises, Common Areas, Retail Facility or other portions of the Project, of Tenant or any of Tenant's assignees, subtenants, licensees or concessionaires, or any of the licensees, invitees, contractors or subcontractors of any of the foregoing Persons, or any of the officers, agents or employees of any of the foregoing Persons (each, a "Tenant Party" and, collectively, the "Tenant Parties"); (4) the violation or breach of, or the failure of Tenant to fully and completely keep, observe, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, provision or restriction of this Lease or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (5) the violation of any Governmental Requirement affecting the Premises or the use or occupancy thereof; (6) any latent or patent defect in any Construction undertaken by Tenant; (7) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant Party in the Premises including, but not limited to, any Claims by another tenant resulting from a delay by Landlord in delivering possession of the Premises to such tenant; (8) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant; or (9) transfer taxes, brokerage commissions, leasing commissions or increases in real estate taxes or assessments against the Project resulting from any transfer of the Premises and/or this Lease by Tenant. THE FOREGOING INDEMNITIES WILL APPLY REGARDLESS OF THE NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR ANY OF LANDLORD'S REPRESENTATIVES OR ANYONE CLAIMING BY, THROUGH OR UNDER ANY OF THEM but will not apply to the extent of the gross negligence or intentional misconduct of Landlord or any of Landlord's Representatives.

(b) Tenant's obligation to indemnify Landlord under this **Section 9.1** shall not be limited to the scope and amount of coverage provided by any insurance maintained by Tenant, including, without limitation, the insurance required to be maintained by Tenant pursuant to **Section 10.1**. Tenant's obligation to indemnify Landlord under this **Section 9.1** shall be independent of any insurance coverage maintained by Tenant or maintained by or otherwise available to Landlord, and under no circumstances shall Landlord be required to elect to proceed either by seeking benefits under any such insurance coverage or by seeking recourse under the protection of this indemnification, but Landlord shall in all events have the right to enforce this indemnification without first seeking the benefit of any such insurance coverage.

(c) The terms and provisions of this Section 9.1 shall survive the Expiration Date, or the date of any earlier termination of this Lease.

9.2 EXCULPATION OF LANDLORD.

(A) LANDLORD, AND ALL SUCCESSOR LANDLORDS AND ALL LANDLORD REPRESENTATIVES (INDIVIDUALLY A "LANDLORD PARTY" AND COLLECTIVELY THE "LANDLORD PARTIES") SHALL NOT HAVE ANY LIABILITY TO TENANT OR TO ANY TENANT PARTY FOR ANY CLAIM, INCLUDING ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY, OR BOTH, DIRECTLY OR INDIRECTLY CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART: (I) ANY ACT OR FAILURE TO ACT OF ANY LANDLORD PARTY OR ANY OFFICER, EMPLOYEE OR AGENT OF ANY LANDLORD PARTY; OR (II) ANY ACCIDENT OR OCCURRENCE ON THE PREMISES OR ANY OTHER PORTION OF THE PROJECT OR THE FACILITY; OR (III) THE PREMISES OR ANY OTHER PORTION OF THE PROJECT OR THE FACILITY BECOMING OUT OF REPAIR; OR (IV) ANY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES OR WIRING; OR (V) BROKEN GLASS OR BACKING-UP OF DRAINS; OR (VI) GAS, WATER, STEAM, ELECTRICITY, OIL, GLYCOL, OR OTHER SUBSTANCE LEAKING, ESCAPING OR FLOWING INTO THE PREMISES; OR (VII) FIRE OR SMOKE; OR (VIII) THE ACTS OR OMISSIONS OF OTHER TENANTS OR OCCUPANTS OF THE PROJECT, THE FACILITY OR THE BANKS PROJECT; OR (IX) ANY CLAIM INDEMNIFIED AGAINST PURSUANT TO SECTION 9.1; OR (X) ANY INTERRUPTION OR STOPPAGE OF ANY UTILITY SERVICE OR FOR ANY DAMAGE TO PERSONS OR PROPERTY RESULTING FROM SUCH STOPPAGE; OR (XI) ANY BUSINESS INTERRUPTION OR LOSS OF USE OF THE PREMISES SUFFERED BY TENANT; OR (XII) DAMAGES OR INJURIES OR INTERFERENCE WITH TENANT'S BUSINESS, LOSS OF OCCUPANCY OR QUIET ENJOYMENT AND ANY OTHER LOSS RESULTING FROM THE EXERCISE BY LANDLORD OF ANY RIGHT OR THE PERFORMANCE BY LANDLORD OF LANDLORD'S MAINTENANCE OR OTHER OBLIGATIONS UNDER THIS LEASE; OR (XIII) ANY BODILY INJURY TO AN EMPLOYEE OF A TENANT PARTY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT OF THE EMPLOYEE AND OCCURRING ANYWHERE IN THE PROJECT; OR (XIV) THE NEGLIGENT ACTS OR OMISSIONS OR THE STRICT LIABILITY OF LANDLORD OR ONE OR MORE LANDLORD REPRESENTATIVES; OR (XV) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES. FURTHER, NO LANDLORD PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY DEFECT, LATENT OR PATENT, IN THE PROJECT, THE FACILITY OR THE PREMISES, OR ANY EQUIPMENT, MACHINERY, UTILITIES, APPLIANCES OR APPARATUS THEREIN. NEITHER TENANT NOR ANY OF TENANT'S ASSIGNEES, SUBTENANTS, LICENSEES OR CONCESSIONAIRES, NOR ANY OF THE LICENSEES, INVITEES, CONTRACTORS OR SUBCONTRACTORS OF ANY OF THE FOREGOING PERSONS, NOR ANY OF THE OFFICERS, AGENTS OR EMPLOYEES OF ANY OF THE FOREGOING PERSONS, SHALL SUE OR OTHERWISE SEEK RECOURSE AGAINST LANDLORD OR ANY OTHER LANDLORD PARTY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION FOR ANY MATTER DESCRIBED ABOVE IN THIS SECTION 9.2(A).

(B) LANDLORD SHALL HAVE NO LIABILITY FOR PAYMENT OF ANY SUMS PAYABLE BY LANDLORD UNDER THIS LEASE OR FOR THE PERFORMANCE BY LANDLORD OF ANY OTHER DUTIES OR OBLIGATIONS OF LANDLORD UNDER THIS LEASE BEYOND THE INTEREST OF LANDLORD IN THE PREMISES. TENANT WILL NOT SEEK TO ENFORCE ANY JUDGMENT OBTAINED BY TENANT AGAINST LANDLORD AGAINST ANY PROPERTY OF LANDLORD OTHER THAN THE PREMISES, AND TENANT SHALL LOOK SOLELY TO, AND RELY SOLELY ON, LANDLORD'S INTEREST IN THE PREMISES FOR ENFORCEMENT AND SATISFACTION THEREOF.

9.3 Waiver of Subrogation. Notwithstanding any other provision of this Lease, each of Landlord and Tenant hereby releases the other and the partners, members, officers, directors, shareholders, employees and agents, successors and assigns of the other, from liability for any loss or damage to the releasing party's property or business that is covered or required to be covered by any insurance policy maintained by the releasing party, including property of others within the releasing party's care, custody and control, and Tenant hereby releases each other tenant of premises in the Project who grants the same release of Tenant and its partners, members, officers, directors, shareholders, employees, agents,

successors and assigns, from liability for any loss or damage to Tenant's property (including, without limitation, Tenant's Work, Alterations and Tenant Personality) or business, caused by fire, the elements, or any other cause to the extent insured against, or required to be insured against, under the terms of policies of insurance maintained, or required to be maintained, by the releasing party under the terms of this Lease. The releases contained or provided for in this Section 9.3 shall apply notwithstanding the fault or negligence of any Person so released. Each of Landlord and Tenant agrees that its insurance policies covering loss or damage to the Premises or the Retail Facility or any property of Landlord or Tenant therein will contain a waiver by the insurer of subrogation against the other party to this Lease and such party's partners, officers, directors, shareholders, employees and agents, and Tenant agrees that its insurance policies will contain a waiver by the insurer with subrogation against any tenant of premises in the Project or the Retail Facility and any of such tenant's respective partners, officers, directors, shareholders, employees and agents. For purposes of this Section 9.3, Tenant's Work shall be considered to be the property of Tenant.

ARTICLE X INSURANCE

10.1 Tenant's Insurance.

(a) Tenant shall procure, and shall maintain in full force and effect at all times during the Term, at Tenant's sole cost and expense and as the named insured, the following insurance, paying as the same become due all premiums therefor:

(i) Causes of Loss-Special Form Building and Personal Property Insurance (written on the then-current ISO forms bearing those names (or the industry-recognized successors to those forms), or forms providing broader coverage), together with endorsements (or separate policies) to provide coverage for (A) Ordinance or Law, (B) war risks, when and to the extent such insurance is obtainable from the United States of America or an agency thereof, and terrorism coverage, (C) flood, (D) earthquake and volcanic eruption risk, (E) demolition and increased cost of construction coverage, (F) if applicable, sprinkler leakage insurance, (G) Utility Service—Direct Damage, and (H) if applicable, Spoilage Coverage, all of which insurance policies and endorsements must cover the full replacement cost of all Tenant Personal Property and all Alterations to the Premises now existing or to be added (and regardless of whether such Alterations were partially or wholly paid for through a Landlord contribution or allowance), without lower sublimits for any required element of coverage or endorsement, as updated from time to time during the Term. Tenant acknowledges that the Project is in an area subject to flood hazard by the Ohio River. Landlord shall have no responsibility to Tenant for any damage to the adjacent parking facilities, Common Areas or the Premises caused by flooding of the Ohio River;

(ii) Occurrence-based Commercial General Liability Insurance (written on the then-current ISO form bearing that name (or the industry-recognized successor to that form), or a form providing broader coverage) covering the Premises and Tenant's and each Tenant Party's activities within the Project, with combined single limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate; \$2,000,000.00 products-completed operations aggregate; and \$1,000,000.00 personal and advertising injury. Such policy must include an endorsement that includes contractual liability coverage for personal and advertising injury. In addition, if Tenant offers liquor from the Premises, such policy must include an endorsement that deletes the liquor liability exclusion from the foregoing-described liability policy or must include a liquor liability endorsement to the policy, or such coverage may be provided via a stand-alone policy of Dramshop (liquor) liability insurance. Such policy shall also specifically insure performance of Tenant's duty and obligation to indemnify Landlord pursuant to Section 9.1;

(iii) comprehensive vehicle liability insurance with a combined single limit of liability limit of not less than \$1,000,000 per occurrence (each such policy shall also specifically insure performance of Tenant's duty and obligation to indemnify Landlord pursuant to Section 9.1);

(iv) worker's compensation insurance as required by any Governmental Requirement, with a waiver of subrogation endorsement;

(v) employer's liability insurance with liability limits of not less than \$500,000.00 per accident, \$500,000.00 per employee by disease, and a \$500,000.00 policy limit by disease;

(vi) whenever Tenant is engaged in the Construction of Tenant's Work or any Alterations, Tenant and each contractor performing work thereon must maintain: (A) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (B) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (C) worker's compensation insurance in the statutory amount, (D) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on diseases, (E) umbrella liability insurance with a minimum limit of \$5,000,000 for all insurance specified in clauses (A), (B), and (D), above, and (F) builder's risk insurance on an "all risk" basis (including collapse) on a completed value (non-reporting) form for full replacement cost covering all work incorporated in the Premises and all materials and equipment in or about the Premises. In addition, at all times during the design and construction of any of its Alterations, Tenant shall maintain, or cause its outside architects and engineers performing the design work for such Alterations to maintain, architects' and engineers' professional liability insurance, on an occurrence basis, with a minimum limit of \$2,000,000 per claim and in the aggregate;

(vii) Causes of Loss-Special Form Business Income (and Extra Expense) Coverage Insurance (written on standard ISO forms bearing those names (or the industry-recognized successors to such forms), or forms providing broader coverage), in adequate amounts to avoid co-insurance provisions for an adequate period of time of not less than 12 months, taking into account the reasonable time period required to rebuild and/or replace the insured property. Such policy (or separate policies, as applicable) must cover at least the same causes of loss as are required to be covered in connection with the property policy in clause (i), above, to the extent generally available to similarly-situated tenants in the Project and similar shopping centers;

(viii) rent insurance insuring Landlord against loss of Base Rent in the event of Casualty, in an amount equal to one hundred percent (100%) of the annual Base Rent from time to time payable under this Lease;

(ix) umbrella liability insurance with a limit of not less than \$5,000,000.00 per occurrence over the insurance coverages described in clauses (ii), (iii), (iv), (v) and (vi) above; and

(xi) upon Landlord's request, any other coverages that become customary under new leases of comparable premises.

(b) All insurance coverage maintained by Tenant may be subject to reasonable deductible amounts that are approved by Landlord. Tenant shall pay all premiums for the insurance coverage that Tenant is required to procure and maintain under this Lease. Any insurance that Tenant is required to obtain pursuant to this Lease may be carried under a "blanket" policy or policies covering other properties or liabilities of Tenant, provided that such "blanket" policy or policies otherwise comply with the provisions of this Section 10.1 and further provided the policy includes a per location aggregate endorsement.

(c) Each insurance policy: (i) shall be issued by an insurer authorized under the applicable Governmental Requirements to issue the coverage provided by the policy; (ii) shall be issued by an insurer reasonably acceptable to Landlord, and in any event by insurers rated not less than A/X by the A.M. Best Rating Guide; (iii) as to all insurance other than the insurance required by Section 10.1(a)(iv), shall name Landlord, any Mortgagee, any property manager and any Person designated by Landlord or as may be required under the Declaration Mortgagee as additional insured parties and, for applicable policies, as loss payees, as their respective interests may appear, including coverage of the partners, members, officers, directors, shareholders, employees and agents of each additional insured, and shall be primary coverage and not as excess or contributing to any other insurance that may be available to the

additional insured; (iv) as to the insurance required by Section 10.1(a)(i), (vi), (vii) and (viii), shall contain standard non-contributory mortgagee clauses in favor of any Mortgagee; (v) shall provide that the policy cannot be canceled as to Landlord or any Mortgagee except after the insurer gives Landlord and any Mortgagee thirty (30) days written notice of cancellation; (vi) shall provide that the policy cannot lapse if it is not renewed for any reason except after the insurer gives Landlord and any Mortgagee thirty (30) days written notice of the non-renewal; (vii) shall provide that no material change in the coverage provided by the policy shall be effective except after the insurer gives Landlord and any Mortgagee thirty (30) days written notice of the change; (viii) shall state that notice of any claim against Landlord or any Mortgagee shall be deemed to have occurred only when an officer of Landlord or such Mortgagee has received actual notice of, and has actual knowledge of, the claim; (ix) shall not be subject to invalidation as to Landlord or any Mortgagee by reason of any act or omission of Tenant or any of Tenant's officers, employees or agents; (x) shall provide that any losses payable thereunder shall be adjusted with Tenant, Landlord and any Mortgagee; (xi) shall contain a provision to the effect that the policy shall not be invalidated, and shall remain in full force and effect, if any insured waives in writing prior to a loss any or all rights of recovery against any party for loss occurring to property covered by that policy, and a provision whereby the insurer itself waives any claims by way of subrogation against Landlord and any Mortgagee; and (x) shall be on an occurrence (and not a claims-made) basis. The minimum limits for the various insurance coverages provided for in Section 10.1(a) are subject to adjustment to a higher amount as Landlord may reasonably require from time to time, taking into account amounts commonly carried with respect to comparable properties in the Cincinnati metropolitan area; provided that as a condition of increasing any such limits, Landlord must, as a condition of such increase, increase the limits of the corresponding insurance coverages carried or required to be carried by it to at least the same limits.

(d) Tenant shall not procure or maintain in force any insurance policy which might have the effect of reducing or diminishing the amounts payable under any of the policies required by this Lease.

(e) Immediately upon the issuance of each policy required under this Lease and at Landlord's request, Tenant shall deliver a duplicate original policy to Landlord and any Mortgagee, together with evidence satisfactory to Landlord and such Mortgagee that the premiums therefor have been paid for a period of at least six (6) months from the date of delivery. Not less than thirty (30) days prior to the expiration date of each policy required, Tenant shall pay the premium for renewal for a period of not less than six (6) months and deliver to Landlord a duplicate original renewal policy or endorsement evidencing the renewal, together with evidence satisfactory to Landlord that the renewal premium has been paid for a period of not less than six (6) months.

(f) In the event of any Casualty loss, Tenant shall give Landlord prompt written notice thereof, and Tenant shall adjust and collect any and all claims under insurance maintained under Section 10.1(a)(i), (vi) or (vii); provided, however, that Landlord and any Mortgagee shall have the right to join with Tenant therein and Tenant shall not settle or compromise any such claim without the prior written consent of Landlord and any Mortgagee, which consent shall not be unreasonably withheld.

(g) In the event Tenant fails to procure and maintain the insurance required herein, then Landlord shall have the right, but not the obligation, to obtain such insurance on Tenant's behalf, in which event Tenant shall reimburse Landlord on demand for all costs and expenses incurred by Landlord in obtaining such insurance.

10.2 Landlord's Insurance. Landlord shall maintain at all times during the term of this Lease insurance in an amount not less than the full replacement cost of the Retail Facility (excluding any tenant contents or improvements), as reasonably determined by Landlord from time to time, against direct and indirect loss or damage by fire and all other casualties and risks covered under Causes of Loss – Special Form insurance. Alternatively, Landlord may elect to self-insure with respect to all or any portion of such risks.

**ARTICLE XI
DAMAGE BY CASUALTY**

11.1 Landlord's Elections. Tenant shall give immediate written notice to Landlord of any damage to the Premises caused by Casualty, and if Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises, to the extent provided in Section 11.2. Notwithstanding the foregoing, in the event that (i) the Proceeds payable in connection with such damage and destruction shall be insufficient to make such restoration, (ii) the Building, the Project or the Retail Facility located in the Building shall be destroyed or substantially damaged by Casualty not covered by insurance, (iii) the Premises shall be destroyed or damaged by any Casualty to the extent of at least fifty percent (50%) of the Premises Rentable Area, (iv) the Building, the Project or the Retail Facility located in the Building shall be destroyed or damaged by any Casualty to the extent of at least fifty percent (50%) of the total Rentable Area of the Building, the Project or the Retail Facility located in the Building, as the case may be, irrespective of whether the Premises are affected by such Casualty, (v) Landlord shall not have actual and unconditional receipt of the Proceeds payable in connection with such Casualty in an amount sufficient to restore the Premises to the condition provided in Section 11.2, and, if the Building, the Project and/or the Retail Facility located in the Building have been damaged or destroyed by such Casualty, to restore the Building, the Project and/or the Retail Facility located in the Building, as the case may be, to its condition immediately prior to such Casualty, (vi) any Mortgagee shall require that all or any portion of the Proceeds shall be applied against any indebtedness owed to such Mortgagee, or (vii) there shall be less than two (2) years remaining in the Term on the Date of Casualty as to any Casualty affecting the Project, then, in any of such events, Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Premises, to the extent provided in Section 11.2. Landlord shall give written notice to Tenant of such election within ninety (90) days after the occurrence of such Casualty. If this Lease is terminated by Landlord by reason of any Casualty, then this Lease shall terminate, and the Term shall expire, on the date thirty (30) days after the date upon which Landlord gives notice of termination with the same effect as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including such date.

11.2 Restoration by Landlord and Tenant. Landlord's obligation to rebuild and repair the Premises under this Article XI shall in any event be limited to restoring the Premises to substantially the condition in which Landlord delivered the Premises to Tenant at the commencement of this Lease (specifically excluding any Tenant's Work and Alterations). Promptly after the completion of such work by Landlord, Tenant shall proceed with reasonable diligence and at its sole cost and expense to restore Tenant's Work and all Alterations done by Tenant within the Premises to substantially the condition in which the same existed prior to the Casualty.

11.3 Continuing Tenant Operations; Rent Abatement. During any period of reconstruction or repair of the Premises, Tenant shall continue the operation of its business within the Premises, to the extent practicable. During the period from the occurrence of a Casualty until Landlord's repairs are completed, Base Rent shall be reduced and abated in proportion to the amount of Premises Rentable Area that is rendered untenantable as a result of such Casualty; provided, however, that if such Casualty is caused by the intentional or negligent acts or omissions of Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or the servants, agents, employees, invitees, licensees, or concessionaires of Tenant's assignees or sublessees, then, and in that event, the Base Rent shall not abate. Tenant shall not be entitled to, and hereby waives, releases, and relinquishes any and all claims against Landlord for, any compensation or damage for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, repair, or restoration of the Premises.

11.4 Tenant's Insurance Proceeds. The Proceeds of Tenant's insurance on account of any Casualty shall be payable to Landlord and Tenant, jointly, for use by Tenant only, except with the consent of Landlord, for the repair or replacement of Tenant Personalty, Tenant's Work and Alterations.

**ARTICLE XII
EMINENT DOMAIN**

12.1 Effect of Permanent Taking.

(a) If there occurs a Taking of all of the Premises, other than a Taking for temporary use, then this Lease shall automatically terminate, and the Term shall automatically expire, effective on and as of the Date of Taking, as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including the such date.

(b) If there occurs a Taking of more than twenty percent (20%) of the Premises Rentable Area, other than a Taking for temporary use, then this Lease shall terminate upon the election of either party effective on and as of the Date of Taking, as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including the such date.

(c) If (i) there occurs a Taking of less than twenty percent (20%) of the Premises Rentable Area, other than a Taking for temporary use, or (ii) if there occurs a Taking of more than ten percent (10%) of the Premises Rentable Area, other than a Taking for temporary use, and this Lease is not terminated in accordance with Section 12.1(b), then, in either of such events, this Lease shall remain in full force and effect for the remainder of the Term, and Base Rent payable hereunder during the unexpired portion of the Term shall be reduced by the percentage which the area of the Premises subject to the Taking bears to the Premises Rentable Area prior to the Date of Taking.

(d) If (i) there occurs a Taking of the Project or the Retail Facility located in the Building, other than a Taking for temporary use, to the extent of at least thirty percent (30%) of the total Rentable Area of the Project or the Retail Facility located in the Building, as the case may be, irrespective of whether the Premises are affected by such Taking, or (ii) Landlord shall not have actual and unconditional receipt of the Award payable in connection with any Taking affecting the Project in an amount sufficient to restore the Premises to the condition provided in Section 12.4, or (iii) any Mortgagee shall require that all or any portion of the Award for any Taking affecting the Project shall be applied against any indebtedness owed to such Mortgagee, or (iv) there shall be less than two (2) years remaining in the Term on the Date of Taking as to any Taking affecting the Project, other than a Taking for temporary use, then Landlord may elect to terminate this Lease, in which case this Lease shall terminate effective on and as of the Date of Taking, as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including the such date.

12.2 Effect of Taking for Temporary Use.

(a) If there occurs a Taking of the Premises or any portion thereof, for temporary use, then this Lease shall remain in full force and effect for the remainder of the Term; provided, however, that during such time as Tenant shall be out of possession of the Premises by reason of such Taking, the failure to keep, observe, perform, satisfy and comply with those terms and conditions of the Lease compliance with which are effectively impractical or impossible as a result of Tenant's being out of possession of the Premises (and which shall not include payment of Rent) shall not be an Event of Default under this Lease.

(b) If (i) there occurs a Taking of the Project or the Retail Facility located in the Building for temporary use to the extent of at least fifty percent (50%) of the total Rentable Area of the Project or the Retail Facility located in the Building, as the case may be, irrespective of whether the Premises are affected by such Taking, or (ii) there shall be less than two (2) years remaining in the Term on the Date of Taking as to any other Taking affecting the Project for temporary use, then Landlord may elect to terminate this Lease, in which case this Lease shall terminate effective on and as of the Date of Taking, as if such date were the Expiration Date, and all Rent shall be apportioned and paid through and including the such date.

(c) If there occurs any other Taking of the Project for temporary use and not affecting the Premises, then this Lease shall remain in full force and effect for the remainder of the Term, and there shall be no abatement of Rent.

12.3 Election to Terminate. Any election to terminate this Lease following a Taking shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the Date of Taking. In the event that neither Landlord nor Tenant shall so exercise any such election to terminate this Lease, then this Lease shall continue in full force and effect.

12.4 Restoration. If this Lease is not terminated following any Taking, Landlord shall, to the extent reasonably practicable and to the extent Landlord has received sufficient severance damages from the Award after deducting all attorneys fees, court costs and other amounts incurred in obtaining such damages, make all necessary repairs or alterations necessary to restore the Premises to the condition that it was in on the Effective Date, and Tenant agrees that promptly after completion of such work by Landlord, Tenant shall proceed with reasonable diligence and at its sole cost and expense to make all necessary repairs or alterations within the scope of Tenant's Work and all Alterations necessary to make the Premises an architectural whole.

12.5 Entitlement to Award.

(a) Except as expressly provided in Section 12.5(b), Landlord shall be entitled to all Awards payable by reason of any Taking, and Tenant shall not be entitled to any portion of, and shall have no claim for, and hereby transfers, assigns, conveys and sets over unto Landlord all of its right, title and interest, if any, in or to, any Award payable by reason of any Taking; and, without limiting the generality of the foregoing, Tenant shall have no claim, against Landlord or the condemning authority or otherwise, for any Award for the value of any unexpired Term or any "bonus value" of the Lease or any extension or renewal options.

(b) Notwithstanding the provisions of Section 12.5(a): (i) the Award for any temporary Taking payable for any period prior to the Expiration Date shall be paid to Landlord for the benefit of Tenant, to be applied to the payment of Rent as it becomes due and payable during the period of temporary Taking (the Award for any temporary Taking payable for any period after the Expiration Date being the sole property of Landlord); (ii) Tenant shall be entitled to retain any separate Award made to Tenant for the value of any Tenant Personalty on the Premises; and (iii) Tenant shall be entitled to retain any separate Award made to Tenant for loss of business.

**ARTICLE XIII
ASSIGNMENT AND SUBLETTING**

13.1. Assignment and Subletting.

(a) Tenant shall not (i) assign, encumber, mortgage, or in any other manner transfer this Lease or any estate or interest therein or enter into a management agreement or delegate its duties with respect to the Premises or this Lease; (ii) sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises; (iii) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of ownership interests in Tenant so as to result in a change in the control of Tenant; (iv) permit any other person to become Tenant by merger, consolidation, or otherwise; or (v) modify or amend any agreement or instrument entered into to effectuate any of the foregoing (each of the events described in clauses (i)-(v) hereinabove, a "Transfer") without the prior written consent of Landlord. Landlord agrees not to unreasonably withhold or condition its consent to a proposed assignment of this Lease or subletting of the Premises to a party which (i) is, in the reasonable judgment of Landlord, of a character or reputation or is engaged in a business which would not be harmful to the image and reputation of the Retail Facility or the Project and can reasonably be expected to perform the obligations of "Tenant" hereunder; (ii) will not use the Premises in a manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Project; and (iii) has a net worth calculated according to generally accepted

accounting principles sufficient to meet Tenant's obligations under this Lease in Landlord's sole, subjective judgment. Without limiting the foregoing, Landlord may withhold its consent (and it shall not be deemed unreasonable), to any such assignment of this Lease or subletting of the Premises to any party (A) which is a governmental entity (or subdivision or agency thereof), (B) which would use the Premises, in whole or in part, for other than Tenant's permitted use hereunder, (C) which is a prospective tenant that has delivered to, or received from, Landlord a written proposal to lease space in the Project before Tenant or its agent contacts such party, (D) which is an occupant of the Project or another project owned by Landlord at the time of such request, or (E) which intends to use, store, or generate any Hazardous Materials in, on or about the Premises. Landlord's agreement not to unreasonably withhold its consent shall apply only to the first assignment or sublease under this Lease, and Landlord may withhold its consent in its sole discretion to any further or subsequent assignment or sublease. Consent by Landlord to one or more Transfers shall not operate as a waiver of Landlord's rights as to any subsequent Transfer. Notwithstanding any Transfer, Tenant and any guarantor of Tenant's obligations under this Lease shall remain fully and jointly and severally liable under this Lease, except in the case of a Transfer approved by Landlord where the assignee has a tangible net worth of at least \$15 million, in which case Tenant and such guarantor shall be released from any liability under this Lease accruing thereafter to the extent the assignee has assumed such liabilities. In the event of any Transfer, whether or not in violation of the terms of this Lease, Landlord may collect Rent from the transferee. Landlord may apply the net amount collected to Base Rent and Additional Rent. No such collection of rent by Landlord from any Person other than Tenant, nor any application of any such rent as provided in this Section 13.1(a) shall, under any circumstances, be deemed a waiver of any of the provisions of this Section 13.1.

As used herein, "change in the control of Tenant" includes: (i) if Tenant or the owner of any controlling percentage of ultimate beneficial ownership of Tenant is a partnership, a withdrawal or change (voluntary, involuntary, or by operation of law) of any partner owning one-third (33 1/3%) or more of the partnership, or the dissolution or liquidation of the partnership; (ii) if Tenant consists of more than one Person, a purported assignment (voluntary, involuntary, or by operation of law) from any of such Persons to any other Person; (iii) if Tenant or the owner of any controlling percentage of ultimate beneficial ownership of Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of the corporation, or the sale or other transfer of the controlling percentage of the capital stock of the corporation, or the sale of more than fifty percent (50%) of the value of the assets of the corporation; and (iv) if Tenant or the owner of any controlling percentage of ultimate beneficial ownership of Tenant is a limited liability company, a withdrawal or change (voluntary, involuntary, or by operation of law) of any manager or of any member owning one-third (33 1/3%) or more of the limited liability company, or the dissolution or liquidation of the limited liability company. In each of the foregoing cases, all changes will be considered cumulative and will be compared against the interests in Tenant as of the date of this Lease or, as applicable, the last change approved in writing by Landlord (and will not be considered in isolation from all preceding transactions). The phrase "controlling percentage" means with respect to a partnership, one-third (33 1/3%) or more of the partnership, with respect to a corporation, the ownership of, and the right to vote, stock possessing more than fifty percent (50%) of the total combined voting power of all classes of the corporation's capital stock issued, outstanding and entitled to vote for the election of directors, and with respect to a limited liability company, one-third (33 1/3%) or more of the limited liability company. The foregoing provision shall not apply to corporations, the stock of which is regularly traded through an exchange or over the counter.

(b) Tenant shall give Landlord at least 30 days advance written notice of any proposed Transfer, accompanied by a copy of the proposed Transfer documents, including such additional information, including financial information, as Landlord may request regarding such transferee.

(c) Notwithstanding anything contained herein, Tenant may, upon prior written notice to Landlord but without Landlord's prior consent and without having to pay any transfer fee or be subject to any right of Landlord to terminate this Lease and/or recapture the Premises, assign this Lease or sublease all or any portion of the Premises, to a Tenant Affiliate provided the trade name set forth in the Basic Lease Terms is not changed in connection therewith. "Tenant Affiliate" means: (i) any entity controlling, controlled by or under common control with Tenant or an owner of Tenant; (ii) any entity resulting from the merger, consolidation or reorganization of Tenant or an owner of Tenant with or into

any other entity; or (iii) any entity acquiring all or substantially all of the ownership of Tenant or all of Tenant's locations, but not fewer than three (3) locations operating under the same trade name as the Premises, in a single packaged transaction. Tenant and any guarantor hereunder shall remain liable for the performance of the terms and conditions of the Lease in the event of any such assignment or sublease, except where the assignee has a tangible net worth of at least \$15 million, in which case Tenant and such guarantor shall be released from any liability under this Lease accruing thereafter to the extent the assignee has assumed such liabilities.

(d) Any issuance of equity interests in Tenant in connection with a public offering on a recognized national exchange, shall not constitute a Transfer herein or require Landlord's consent.

(e) In the event of any Assignment or Sublease, regardless of whether Landlord's consent is obtained or required, Tenant shall pay to Landlord fifty percent (50%) of the Transfer Premium. For the purposes of this Section 13.1(e):

(i) The "Transfer Premium" in respect of an Assignment shall mean all sums of money, the value of all services and property, and any other consideration of any kind or nature whatsoever payable to or for the benefit of Tenant, or at the direction of Tenant, as consideration for the Assignment or otherwise in connection with the Assignment (including, without limitation, (A) all payments in consideration of the Assignment, (B) all payments for Alterations installed by Tenant in the Premises, and (C) all payments in excess of fair market value for services rendered by Tenant or for assets, fixtures, inventory, equipment furniture or other Tenant Personality). In the event of an Assignment in connection with a sale of Tenant or all or any portion of Tenant's assets, Tenant shall specifically allocate a commercially reasonable amount as consideration for the Assignment of Tenant's Interest in this Lease.

(ii) The "Transfer Premium" in respect of a Sublease shall mean the amount by which the aggregate of all sums of money, the value of all services and property, and any other consideration of any kind or nature whatsoever payable to or for the benefit of Tenant, or at the direction of Tenant, as consideration for the Sublease or otherwise in connection with the Sublease (including, without limitation, (A) all payments for or in the nature of base rent or additional rent under the Sublease, (B) all payments for Alterations installed by Tenant in the Premises, and (C) all payments in excess of fair market value for services rendered by Tenant or for assets, fixtures, inventory, equipment furniture or other Tenant Personality) exceeds the Base Rent and Additional Rent due and payable by Tenant under this Lease and allocable to the portion of the Premises and portion of the Term affected by such Sublease.

Tenant shall pay such portion of the Transfer Premium to Landlord from time to time as received by Tenant, within five (5) days after receipt thereof by Tenant.

13.2 Encumbrance by Tenant. Tenant shall not mortgage, pledge, hypothecate or otherwise encumber its interest under this Lease without the prior written consent of Landlord, which consent may be withheld by Landlord for any reason or no reason, and in its sole and absolute judgment and discretion.

13.3 Non-Assignability of Options. In no case may Tenant assign any options or Extension Terms granted to Tenant hereunder, all such options and Extension Terms being deemed personal to Tenant and exercisable by Tenant only.

13.4 Transfer by Landlord. Landlord's right to sell, convey, transfer, assign or otherwise dispose of Landlord's interest in and to all or any portion of the Project, the Retail Facility, the Premises or this Lease shall be unrestricted. The term "Landlord" as used in this Lease means only the owner from time to time of Landlord's interest in and to the Premises and this Lease, so that in the event of any sale, conveyance, transfer, assignment or otherwise disposition thereof, the grantor or transferor thereof shall be, and hereby is, without further agreement, entirely released from and relieved of all the duties, obligations, liabilities and responsibilities of Landlord under this Lease and Tenant shall thereafter look only and solely to the grantee or transferee thereof for performance of all of Landlord's duties and obligations under this Lease. Any such sale, conveyance, transfer, assignment or otherwise disposition of the Premises, unless pursuant to a foreclosure sale or deed in lieu of foreclosure, shall be subject to this Lease and it shall be

deemed and construed without further agreement that the grantee or transferee thereof has assumed and agreed to pay and perform any and all duties, obligations, liabilities and responsibilities of Landlord arising under this Lease during the period of time that such grantee or transferee shall be the owner of Landlord's interest in and to the Premises and this Lease.

ARTICLE XIV DEFAULTS AND REMEDIES

14.1 Landlord's Rights to Act for Tenant. If Tenant fails to pay any Rent or to take any other action when and as required under this Lease, Landlord may, in addition to any other remedies at law or in equity or elsewhere in this Lease provided, without demand upon Tenant and without waiving or releasing Tenant from any duty, obligation, liability or responsibility under this Lease, pay any such Rent, or take any such other action required of Tenant. The actions which Landlord may take shall include, but are not limited to, the performance of maintenance or repairs and the making of replacements to the Premises, and the payment of insurance premiums which Tenant is required to pay under this Lease. Landlord may pay all incidental costs and expenses incurred in exercising its rights under this Lease, including, without limitation, reasonable attorneys' fees and expenses, penalties, re-instatement fees, late charges, and interest. All amounts paid by Landlord pursuant to this Section 14.1, shall be due and payable by Tenant to Landlord on demand. All rights of Landlord under this Section 14.1 may be exercised by Persons acting on behalf of Landlord, under authority granted Landlord. Neither Landlord nor any other Person acting on Landlord's behalf shall be liable for any claim, loss or damage suffered by Tenant resulting from the exercise of the rights granted under this Section 14.1.

14.2 Events of Default.

(a) The happening of any one or more of the following shall be deemed to be an "Event of Default" under this Lease:

(i) if Tenant shall fail to pay when due any Rent and shall not cure such failure within five (5) days after Landlord gives Tenant written notice thereof (provided, however, that Tenant shall be entitled to notice and opportunity to cure on account of any failure to pay Rent only two (2) times during any twelve (12) calendar month period, and any subsequent failure to pay when due any Rent during such twelve (12) calendar month period shall constitute an Event of Default without the giving by Landlord of any notice or opportunity to cure whatsoever); or

(ii) if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform or comply with, any of the terms and provisions of Section 5.1 or Section 5.5; or

(iii) if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform or comply with, the terms and provisions of Section 10.1; or

(iv) if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform or comply with, the terms and provisions of Article XIII; or

(v) if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, restriction or provision of this Lease (other than those referenced in Sections 14.2(a)(i), (ii), (iii), and (iv)), and shall not cure such failure within thirty (30) days after Landlord gives Tenant written notice thereof, or, if such failure shall be capable of cure but incapable of cure within thirty (30) days, if Tenant shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence; or

(vi) if Tenant shall cease doing business as a going concern, or if Tenant or any Guarantor shall make an assignment for the benefit of its creditors; or

(vii) If Tenant or any Guarantor (other than Frank Capri) shall generally not pay its debts before they become due or admit in writing its inability to pay its debt as they become due; or

(viii) If a writ of execution or attachment is levied on or against any property of Tenant within the Premises and the same not being released or discharged within fifteen (15) days thereafter; or

(ix) If Tenant or any Guarantor shall institute, or if there shall be instituted against Tenant or any Guarantor, any proceedings in a court of competent jurisdiction for the reorganization, liquidation, or voluntary or involuntary dissolution of Tenant or any Guarantor, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver for the property of Tenant or any Guarantor, and, as to any such proceedings that are not instituted by Tenant or such Guarantor, said proceedings are not dismissed, and any receiver, trustee or liquidator appointed therein not discharged, within thirty (30) days after the institution of such proceedings; or

(x) If any act is done or permitted by Tenant which creates a lien against the Project and the same is not released within thirty (30) days after the lien is filed; or

(xi) If any representation, warranty, or statement made by Tenant orally, in this Lease or in any other information provided by Tenant or any Guarantor to Landlord with respect to the identity, net worth, liabilities, assets, business or financial condition of Tenant or any Guarantor, or any other matter, shall prove to be untrue or misleading.

For purposes of Sections 14.2(a)(vi), (vii), (viii) and (ix), "Tenant" shall be deemed to include any predecessor to Tenant's interest under this Lease that has not been expressly released by Landlord in a signed writing from its obligations under this Lease.

(b) With respect to the happening of any violation, breach, failure, event or circumstance set forth in this Section 14.2 (other than Section 14.2(a)(i) for which a cure period is provided herein), in the event of an emergency or in the event such action is necessary, in Landlord's sole good faith judgment and discretion, to avoid damage to property or bodily injury or death, Landlord may, without obligation, exercise the rights and remedies set forth in Section 14.3(a)(vi) prior to the expiration of such cure period, and, in such event, Tenant shall reimburse Landlord therefor as set forth in said Section 14.3(a)(vi).

14.3 Remedies.

(a) This Lease and the Term hereby granted and the demise hereby made are subject to the limitation that, if and whenever any Event of Default shall occur, Landlord may, at its option, in addition to all other rights and remedies provided under this Lease or by law or equity, exercise any one or more of the following remedies, separately or concurrently or in any combination, without any notice (except as expressly provided below) or demand whatsoever and without prejudice to any other remedy which it may have:

(i) Landlord may terminate this Lease by giving Tenant written notice of termination, in which event Tenant shall immediately quit and vacate the Premises and deliver and surrender possession of the Premises to Landlord, and this Lease shall be terminated at the time designated by Landlord in its notice of termination to Tenant.

(ii) Without terminating this Lease pursuant to Section 14.3(a)(i), Landlord may enter upon and take possession of the Premises and expel or remove Tenant and any other Person who may be occupying the Premises, by force if necessary, without being liable for prosecution or any claim for damages. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of termination to Tenant pursuant to Section 14.3(a)(i).

(iii) Landlord may re-lease the Premises or any part thereof, on such terms and conditions as Landlord may deem satisfactory, and receive the rental for any such re-leasing, in which event Tenant shall pay to Landlord on demand any deficiency that may arise by reason of such re-leasing.

(iv) To the maximum extent permitted by law, Landlord may declare all Rent due or to become due under this Lease to be immediately due and payable, with amounts to become due, minus amounts Tenant proves could reasonably have been avoided by Landlord, being discounted to present value (determined based on a discount rate equal to the then average yield for Moody's "AAA" rated corporate bonds with a maturity date on the Expiration Date, if such rate is not available, a comparable rate designated by Landlord), such payment not to be deemed a penalty or liquidated damages but merely to constitute payment in advance of Rent for the remainder of the Term.

(v) Landlord may hold Tenant liable for all Rent accrued to the date of the occurrence of such Event of Default, and all Rent thereafter required to be paid by Tenant to Landlord during the Term. Actions to collect amounts due by Tenant provided for in this Section 14.3(a)(v) may be brought from time to time by Landlord, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term.

(vi) Landlord may do whatever Tenant is obligated to do under the terms of this Lease, in which event Tenant shall reimburse Landlord on demand for any expenses, including, without limitation, reasonable attorneys' fees, which Landlord may incur in thus effecting satisfaction and performance of or compliance with Tenant's duties and obligations under this Lease.

(b) Except as otherwise expressly, provided herein, in the event of termination of this Lease or of Tenant's right to possession of the Premises or repossession of the Premises for an Event of Default, Landlord shall not have any obligation to re-lease or attempt to re-lease the Premises, or any portion thereof, or to collect rental after re-leasing (if any); but Landlord shall have the option to re-lease or attempt to re-lease and in the event of re-leasing Landlord may re-lease the whole or any portion of the Premises for any period, to any tenant, and for any use and purpose. Landlord shall in no way be responsible or liable for any rental concessions or any failure to re-lease the Premises or any part thereof, or for any failure to collect any rental due upon such re-leasing. Upon each such re-leasing, all rentals received by Landlord from such re-leasing shall be applied: first to the payment of any indebtedness (other than any Rent due under this Lease) of Tenant to Landlord; second, to the payment of any costs and expenses of such re-leasing, including, without limitation, brokerage fees and attorney's fees and costs of alterations and repairs; third, to the payment of Rent then due and unpaid under this Lease; and the residue, if any, shall be held by Landlord without interest to the extent of and for application in payment of future Rent as the same may become due and payable hereunder. If such rentals received from such re-leasing shall at any time or from time to time be less than sufficient to pay to Landlord the entire Rent then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord on demand. Such deficiency shall, at Landlord's option, be calculated and paid monthly. No such re-leasing shall be construed as an election by Landlord to terminate this Lease unless a written notice of such election has been given to Tenant by Landlord. Notwithstanding any such re-leasing without termination, Landlord may at any time thereafter elect to terminate this Lease for any previous Event of Default.

(c) In the event Landlord elects to terminate this Lease by reason of an Event of Default, or in the event Landlord elects to terminate Tenant's right to possession of the Premises without terminating the Lease, Landlord may hold Tenant liable for: (i) all Base Rent and Additional Rent accrued to the date of such termination; plus (ii) the excess, if any, of (A) the Rent which would have otherwise been payable hereunder during the remainder of the Term, over (B) the fair rental value of the Premises for the same period. Actions to collect amounts due by Tenant provided for in this Section 14.3(c) may be brought from time to time by Landlord, on one or more occasions.

(d) Intentionally deleted.

(e) If this Lease shall terminate as a result of or while there exists an Event of Default hereunder, any funds of Tenant held by Landlord may be applied by Landlord to any damages payable by Tenant (whether provided for herein or by law) as a result of such termination or Event of Default.

(f) The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever, arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises, or any claim of injury or damage hereunder, and agree that any such action or proceeding shall be tried before a court and not before a jury. Tenant covenants and agrees that Tenant will not interpose any permissive counterclaim or permissive claim for offset or deduction in any summary proceeding brought by Landlord to recover possession of the Premises.

(g) Neither the commencement of any action or proceeding, nor the settlement thereof, nor entry of judgment thereon shall bar Landlord from bringing subsequent actions or proceedings from time to time, nor shall the failure to include in any action or proceeding any sum or sums then due be a bar to the maintenance of any subsequent actions or proceedings for the recovery of such sum or sums so omitted.

(h) No waiver by Landlord of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any other right or remedy then or thereafter existing. No failure of Landlord to pursue or exercise any of Landlord's powers, rights or remedies or to insist upon strict and exact compliance by Tenant with any agreement, term, covenant, condition, requirement, provision or restriction of this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver by Landlord of the right to demand strict and exact compliance with terms and conditions of this Lease. No termination of this Lease shall affect Landlord's right to collect all Rent for the period prior to termination.

(i) Tenant acknowledges that Landlord may not have an adequate remedy at law in respect of Events of Default other than the payment of Rent, and that Landlord shall be entitled to injunctive and other equitable relief if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, restriction or provision of this Lease (other than the payment of Rent), or shall threaten to do so.

(j) Mitigation of Damages. Notwithstanding the foregoing, following any Event of Default by Tenant, Landlord hereby agrees to use commercially reasonable efforts to mitigate its damages. Tenant agrees that if Landlord markets the Premises in a manner substantially similar to the manner in which Landlord markets other space in the Retail Facility, then Landlord shall be deemed to have used commercially reasonable efforts to mitigate damages. Tenant shall continue to be liable for all Minimum Rent, Additional Rent, and all other sums due hereunder (whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of this Lease), except to the extent that Tenant pleads and proves by clear and convincing evidence that Landlord failed to exercise commercially reasonable efforts to mitigate damages to the extent required under this paragraph (j) and that Landlord's failure caused an avoidable and quantifiable increase in Landlord's damages for unpaid Rent. Without limitation to the foregoing, Landlord shall not be deemed to have failed to mitigate damages, or use efforts required by law to do so, because: (i) Landlord leases other space in the Retail Facility which is vacant prior to re-letting the Premises; (ii) Landlord refuses to relet the Premises to any Tenant related to Tenant, or any principal of Tenant, or any entity related to such principal; (iii) Landlord refuses to relet the Premises to any person or entity whose creditworthiness is not acceptable to Landlord in the exercise of its reasonable discretion; (iv) Landlord refuses to relet the Premises to any person or entity because the use proposed to be made of the Premises by such prospective tenant is not of a type and nature consistent with that of the other tenants in the portions of the Retail Facility leased or held for lease for retail purposes as of the date Tenant defaults under this Lease, or such use would, in Landlord's reasonable judgment, impose unreasonable or excessive demands upon the building systems, equipment or facilities; (v) Landlord refuses to relet the Premises to any person or entity, or any affiliate of such person or entity, who has been engaged in litigation with Landlord or any of its affiliates; (vi) Landlord refuses to relet the Premises because the tenant or the

terms and provisions of the proposed lease are not approved by the holders of any liens or security interests in the Retail Facility, or would cause Landlord to be in default of, or to be unable to perform any of its covenants or obligations under, any agreements between Landlord and any third party; (vii) Landlord refuses to relet the Premises because the proposed tenant is unwilling to execute and deliver Landlord's standard lease form or such tenant requires improvements to the Premises to be paid at Landlord's cost and expense; (viii) Landlord refuses to relet the Premises to a person or entity whose character or reputation, or the nature of such prospective tenant's business, would not be acceptable to Landlord in its reasonable discretion; (ix) Landlord refuses to expend any material sums of money to market the Premises in excess of the sums Landlord typically expends in connection with the marketing of other space in the building in which the Premises are located; or (x) Landlord refuses to relet the Premises to any person or entity whose use would violate any restriction, covenant or requirement contained in the lease of another tenant of the Retail Facility or the Project. As used in this paragraph (j), an "affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity.

14.4 Intentionally Omitted.

14.5 Default by Landlord. If Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord and, if Tenant has been notified of the name and notice address of such lender, Landlord's lender of such default, specifying in said notice the default with which Landlord is charged, and Landlord shall not be deemed in default if the same is cured within thirty (30) days after receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 14.5 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30)-day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30)-day period (or Landlord's lender in a longer reasonable time) shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed to completion. In no event will Tenant have (and Tenant hereby waives) any right to terminate this Lease as a result of a Landlord default.

ARTICLE XV TENANT'S BANKRUPTCY

15.1 Nature of Lease. Tenant acknowledges that this Lease is a commercial lease of premises in a shopping center, as such term is described in the Bankruptcy Code. Tenant agrees that Tenant, as the debtor in possession, or the trustee for Tenant (the "Trustee"), in any proceeding under the United States Bankruptcy Code (the "Bankruptcy Code") shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from and after an order of relief.

15.2 Rights of Landlord. If the Trustee proposes to assume this Lease or to make an Assignment or Sublease to any Person which shall have made a *bona fide* offer to accept an Assignment or Sublease on terms acceptable to the Trustee, then the Trustee shall give Landlord written notice setting forth an address of such Person and the terms and conditions of such offer, no later than twenty (20) days after receipt of such offer, but in any event no later than ten (10) days prior to the date on which the Trustee makes application to the bankruptcy court for authority and approval to enter into the assumption and Assignment or Sublease. Landlord shall have the prior right and option, to be exercised by written notice to the Trustee given any time prior to the effective day of such proposed Assignment or Sublease, to accept an Assignment or Sublease upon the same terms and conditions and for the same consideration, if any, as the *bona fide* offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment or subletting of this Lease.

15.3 Adequate Assurance; Actual Pecuniary Loss. For the purposes of the Bankruptcy Code: (i) in respect of the obligation of the Trustee to provide adequate assurance that the Trustee will "promptly" cure defaults and compensate for actual pecuniary loss, the word "promptly" shall mean that cure of defaults and compensation will occur no later than sixty (60) days following the filing of any motion or application to assume this Lease; and (ii) in respect of the obligation of the Trustee to compensate or to provide adequate assurance that the Trustee will promptly compensate Landlord for "actual pecuniary loss," the term "actual pecuniary loss" shall mean, in addition to any other provisions contained herein relating to Landlord's damages upon default, payments of rent, including interest at the rate provided for herein on all unpaid rent and obligations of Tenant to pay money under this Lease, all attorneys' fees and related costs and expenses of Landlord incurred in connection with any default of Tenant and in connection with Tenant's bankruptcy proceedings.

15.4 Assumption by Assignee. Any Person which is the Transferee of an Assignment pursuant to the provisions of the Bankruptcy Code shall be deemed, without further act or deed, to have assumed all of the obligations arising out of this Lease and each of the conditions and provisions hereof on or after the date of such Assignment. Any such Transferee shall upon the request of Landlord forthwith execute and deliver to Landlord an instrument in form and substance acceptable to Landlord confirming such assumption.

ARTICLE XVI SURRENDER; HOLDING OVER

16.1 Surrender.

(a) On the Expiration Date, or the date of any earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender and yield up unto Landlord the Premises, together with, unless otherwise elected by Landlord in writing, all Tenant's Work and Alterations. All Tenant's Work and Alterations shall be in good order and repair, ordinary wear and tear, obsolescence, damage by Casualty and Taking excepted. Tenant shall execute and deliver to Landlord, promptly after the Expiration Date, or the date of any earlier termination of this Lease, on Landlord's request, a quitclaim deed to the Premises, in recordable form, designating Landlord as the grantee, and Tenant hereby irrevocably appoints Landlord, its successors and assigns, as the attorney in fact of Tenant to execute, seal and deliver such quit-claim deed on behalf of Tenant should Tenant refuse or fail to do so within ten (10) days after Landlord shall give notice to Tenant requesting the execution, sealing and delivery of such quit-claim deed.

(b) All Tenant Personalty shall be removed by Tenant on or before the earliest of (i) the Expiration Date, (ii) the date of any earlier termination of this Lease, or (iii) the day Landlord takes possession of the Premises as Tenant's agent pursuant to Article XIV; and, prior to such date, Tenant shall repair all damage to the Premises caused by such removal. All Tenant Personalty not so removed shall be deemed abandoned by Tenant and conveyed to Landlord free of any interest of, or any interest arising by, through or under Tenant, and without any compensation owing therefor by Landlord to Tenant, and Landlord may remove such Tenant Personalty and dispose of such Tenant Personalty as Landlord shall elect in its sole discretion, and Tenant shall reimburse Landlord for the cost of such removal and disposition.

(c) The provisions of this Section 16.1 shall survive the Expiration Date, or the date of any earlier termination of this Lease.

16.2 Holding Over. If Tenant remains in possession of the Premises after the Expiration Date, or the date of any earlier termination of this Lease, and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a tenant at sufferance at a rent equal to all Rent herein provided (including Percentage Rent (the breakpoint for which will be calculated based upon the Base Rent in effect prior to the expiration or termination of the Term, without giving effect to the increase in the Base Rent attributable to the holdover) and monthly Base Rent, which shall be deemed to be the greatest of (i) the amount that would have been payable hereunder if this Lease had not been terminated, or (ii)

the amount that would have been payable hereunder if this Lease had been extended pursuant to an option contained herein, or (iii) the amount payable for the last month prior to the Expiration Date or earlier date of termination) plus fifty (50%) percent of such amount, and otherwise subject to all the terms, covenants, conditions, agreements, requirements, restrictions and provisions of this Lease insofar as the same are applicable to a tenant at sufferance, and in no event shall there be any renewal of this Lease by operation of law. In addition, Tenant shall be subject to and must comply with any changes to this Lease stipulated, in writing, by Landlord at least fifteen (15) days before the effective date of such stipulations. Notwithstanding anything contained herein to the contrary, nothing contained in this Section (including Landlord's acceptance of holdover rent) may be deemed or construed to give Tenant the right to hold over or to continue to retain possession of the Premises or to extend this Lease or the Term. In addition, Tenant will be liable for all Claims of whatever type incurred by Landlord as a result of such holding over.

ARTICLE XVII SUBORDINATION; ATTORNMEN

17.1 Subordination. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any Mortgage which may now or hereafter affect Landlord's interest in the Premises or Landlord's interest hereunder and to any modifications, renewals, consolidations, extensions, or replacements of any of the foregoing. This Section 17.1 shall be self-operative and no further instrument of subordination need be required by any Mortgagee. In confirmation of such subordination, Tenant, on demand at any time or times by Landlord, shall execute, seal and deliver to Landlord, without expense to Landlord, any and all instruments that may be requested by Landlord to confirm or evidence the subordination of this Lease and all rights hereunder to the lien of any such Mortgage, and each renewal, modification, consolidation, replacement, and extension thereof. In addition Tenant, on demand at any time or times by Landlord, Tenant shall execute, seal and deliver to Landlord, without expense to Landlord, any and all instruments that may be requested by Landlord to make this Lease superior to the lien of any such Mortgage, and each renewal, modification, consolidation, replacement, and extension thereof.

17.2 Attornment. If any Mortgagee shall hereafter succeed to the rights of Landlord under this Lease, whether through possession or foreclosure or transfer in lieu of foreclosure, or if any other purchaser at foreclosure shall hereafter succeed to the rights of Landlord under this Lease (any such successor to the rights of Landlord under this Lease, a "Successor Landlord"), then, at the option of such Successor Landlord, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that may be requested by such Successor Landlord to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such Successor Landlord and Tenant, subject to all the terms, covenants, and conditions of this Lease; provided, however, that such Successor Landlord shall not be liable for returning to Tenant, nor crediting against any Rent due hereunder, any advance rentals previously paid by Tenant to Landlord or the Security Deposit unless such Successor Landlord has acknowledged the receipt thereof.

17.3 Landlord as Attorney-in-Fact for Tenant. If Tenant shall fail at any time to execute, seal and deliver any instrument that is required to be delivered to Landlord, any Mortgagee or any other Person under the terms of this Lease and if such failure continues for more than fifteen (15) days after submission of such instrument to Tenant, then Landlord in addition to any other remedies available to it in consequence thereof, may either: (a) execute, seal and deliver the same as the attorney in fact of Tenant and in Tenant's name, place and stead, and Tenant hereby irrevocably makes, constitutes, and appoints Landlord, its successors and assigns, as such attorney in fact for that purpose; or (b) charge Tenant, as Additional Rent, a late fee of \$50/day for each day of delay in returning such instrument, provided, however, that the amount of such late fee will be doubled every sixth (6th) business day after which the late fee becomes applicable (or the last such doubling, as applicable) until the day Landlord receives an executed original of the applicable instrument; or (c) take both of the foregoing actions. Landlord's remedies under this Section 17.3 are cumulative with and in addition to Landlord's other remedies at law or in equity or set forth in this Lease and are not in lieu of each other or any other remedy.

**ARTICLE XVIII
MERCHANTS ASSOCIATION**

18.1 Intentionally Omitted.

**ARTICLE XIX
GENERAL PROVISIONS**

19.1 Notices. Whenever any notice, demand or request is required or permitted under this Lease, such notice, demand or request shall, as a condition precedent to its effectiveness, be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses for each party set forth in the Basic Lease Terms, or to such other addresses as are specified by written notice given in accordance herewith. All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; and those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier. Any notice, demand or request not received because of changed address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

19.2 Notice to Mortgagees. Upon the request of either Landlord or any Mortgagee, Tenant shall send to such Mortgagee copies of all notices sent to Landlord, such copies to be forwarded to such Mortgagee as and when such notices are sent to Landlord and at the mailing address from time to time provided to Tenant by either Landlord or such Mortgagee. In addition, Tenant may not exercise any of its remedies on account of a default by Landlord under this Lease unless and until such Mortgagee shall have received written notice of such default from Tenant and a period of thirty (30) days after receipt of such notice for curing such default shall thereafter have elapsed.

19.3 Brokers. All negotiations relative to this Lease and the leasing of the Premises contemplated by and provided for in this Lease have been conducted by and between Landlord and Tenant without the intervention of any Person as agent or broker, other than Broker. Landlord and Tenant warrant and represent to each other that there are and will be no broker's commissions or fees payable in connection with this Lease or the leasing of the Premises by reason of their respective dealings, negotiations or communications except the commission payable to Landlord's Broker by Landlord and Tenant's Broker by Landlord's Broker, in accordance with the terms and provisions of separate agreements between Landlord and Landlord's Broker and Tenant's Broker, respectively. Landlord and Tenant shall, and do each hereby, indemnify, defend and hold harmless each other from and against any and all liabilities, damages, losses, costs and expenses (including attorneys' fees and expenses) in any manner arising out of, by reason of or in connection with the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Lease or the leasing of the Premises.

19.4 Quiet Enjoyment. Subject to the terms and conditions of this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises during the Term without hindrance or interruption by Landlord, so long as Tenant keeps, observes, performs, satisfies and complies with all of the agreements, terms, covenants and conditions, requirements, provisions and restrictions of this Lease to be kept, observed, performed, satisfied and complied with by Tenant under this Lease and pays all Rent required to be paid by Tenant under this Lease.

19.5 Estoppel Certificates. At any time and from time to time, Tenant, on or before the date specified in a request made by Landlord, which date shall not be earlier than ten (10) days from the making of such request, shall execute, acknowledge and deliver to Landlord or any Person specified by Landlord a

certificate evidencing whether or not: (i) Tenant is in possession of the Premises; (ii) this Lease is in full force and effect; (iii) this Lease has been amended in any way (identifying any amendment with a true and correct copy attached); (iv) there are any existing defaults hereunder to the knowledge of Tenant and specifying the nature of such default, if any; (v) Tenant contends there are any existing set-offs or defenses against enforcement of any right or remedy of Landlord or any duty or obligation of Tenant under this Lease (identifying such matter); (vi) the date to which Rent, if any, has been paid; and (vii) such other information as Landlord reasonably requests. Each certificate delivered pursuant to this Section 19.5 may be relied on by any prospective purchaser or transferee of the Retail Facility or Project or of Landlord's interest hereunder or by any Mortgagee or by any assignee of any such Mortgagee. If Tenant shall fail at any time to execute, acknowledge and deliver any such certificate, Landlord in addition to any other remedies available to it in consequence thereof, may execute, acknowledge and deliver the same as the attorney in fact of Tenant and in Tenant's name, place and stead, and Tenant hereby irrevocably makes, constitutes, and appoints Landlord, its successors and assigns, as such attorney in fact for that purpose.

19.6 No Partnership or Joint Venture. Nothing herein contained shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

19.7 Perpetuities. If for any reason the delivery of the Premises to Tenant has not occurred within one (1) years of the date hereof, this Lease shall thereupon terminate and be of no further force or effect (except with respect to matters that arose before such termination).

19.8 Attorneys' Fees. The prevailing party shall be entitled to recover from the other party reasonable attorneys' fees actually incurred in connection with the institution of any action or proceeding instituted by reason of any alleged breach or default of any provision of this Lease, or any action or proceeding for a declaration of the rights or obligations of the parties hereunder or any action or proceeding for any other judicial remedy, at law or in equity.

19.9 Headings. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease.

19.10 Pronouns. Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

19.11 Binding Effect. This Lease shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

19.12 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

19.13 Defined Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

19.14 Severability. If any term, covenant, condition or provision of this Lease, or the application thereof to any Person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to

any other Person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

19.15 Time of Essence. Time is of the essence of this Lease. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Lease. If any date set forth in this Lease shall fall on, or any time period set forth in this Lease shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Lease or any deadline under this Lease shall be the specified day or date, and shall include the period of time through and including such specified day or date.

19.16 Applicable Law; Venue; No Jury Trial. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Ohio. Any legal suit, action or proceeding against Landlord or Tenant arising out of or relating to this Lease shall be instituted in any federal or state court in Hamilton County, Ohio, and each party waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and each party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. **TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.**

19.17 Entire Agreement. This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Lease shall be of no force or effect.

19.18 Modifications. This Lease shall not be modified or amended in any respect except by a written agreement executed by the parties in the same manner as this Lease is executed.

19.19 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

19.20 Authority. Each party hereto warrants and represents that such party has full and complete authority to enter into this Lease and each individual executing this Lease on behalf of Tenant warrants and represents that he has been fully authorized to execute this Lease on behalf of Tenant and that such party is bound by the signature of such representative.

19.21 Counsel. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Lease and has had ample opportunity to read, review and understand the provisions of this Lease.

19.22 No Construction Against Preparer. No provision of this Lease shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

19.23 No Usury. The intention of the parties being to conform strictly to the applicable usury laws, whenever any provision herein provides for payment by either party to the other of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be reduced to such legal rate.

19.24 OFAC. Tenant represents, warrants and covenants to and with Landlord that:

(a) Tenant and all beneficial owners of Tenant are in compliance with all Governmental Requirements applicable to such Persons (as defined below), including, without limitation, the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other executive orders in connection therewith. The term "Person" as used herein means any corporation, partnership, limited liability company, joint venture, individual, trust, real estate investment trust, banking association, federal or state savings and loan institution, nation, or other legal entity, whether or not a party hereto.

(b) None of the funds of Tenant or any beneficial owner of Tenant have been derived from any unlawful activity with the result that the direct investment in Tenant is prohibited by any applicable Governmental Requirement.

(c) Neither Tenant nor any beneficial owner of Tenant:

(i) is a person or entity with whom United States Persons are restricted from doing business under (A) the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., (B) the Trading With the Enemy Act, 50 U.S.C. App. Section 5, (C) any executive order promulgated under any of the foregoing, (D) any implementing regulation promulgated thereunder, or (E) any other applicable Governmental Requirement;

(ii) is in violation of the federal Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act"), Public Law 107-56, its implementing regulations promulgated by the U.S. Department of Treasury Financial Crimes Enforcement Network (31 CFR Part 103), or any other anti-money laundering Governmental Requirement;

(iii) is listed on any of the Lists (as defined below) or engaged in any illegal activities;

(iv) is acting, directly or indirectly, for or on behalf of any Person listed on any of the Lists;

(v) is engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any Person listed on any of the Lists;

(vi) shall transfer or permit the transfer of any interest in Tenant or any beneficial owner of Tenant to any Person who is, or whose beneficial owners are, listed on the Lists;

(vii) is obligated to pay, donate, transfer, or otherwise assign any property, money, goods, or services directly or indirectly to any Person listed on any of the Lists;

(viii) has been arrested for money laundering or for predicate crimes to money laundering, convicted or pled nolo contendere to charges involving money laundering or predicate crimes to money laundering; or

(ix) shall assign this Lease or any interest herein, or sublet all or any portion of the Premises, to any Person who is listed on any of the Lists.

(d) The term "Lists" as used herein means the Specially Designated Nationals and Blocked Persons List maintained by the OFAC pursuant to the Order, and any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or any other governmental agency or authority, or pursuant to any other applicable executive order.

(e) If, during the term of this Lease, Tenant or any beneficial owner of Tenant becomes listed on any of the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering (each a "Triggering Event"), then Tenant shall

promptly notify Landlord, but in no event later than seven (7) days after the occurrence of the Triggering Event. If Tenant or any such beneficial owner of Tenant fails within thirty (30) days after the occurrence of the Triggering Event to (i) have itself removed from the Lists, (ii) have the indictment or arraignment dismissed, or (iii) be released from such detention, then Landlord may terminate this Lease by giving written notice to Tenant and neither Tenant nor Landlord shall thereafter have any liabilities or obligations under this Lease except for those liabilities and obligations which are specifically set forth herein to survive such termination and except that Landlord may, if it so elects in writing, treat such failure as an Event of Default and exercise the remedies set forth in Section 14.3.

19.25 Guaranty. Contemporaneously with the execution and delivery of this Lease, each Guarantor shall execute and deliver to Landlord a Guaranty in the form attached hereto as Exhibit "E" (the "Guaranty").

19.26 Special Stipulations. To the extent that the Special Stipulations set forth in Exhibit "G" conflict with any of the printed provisions of this Lease, such Special Stipulations shall control.

19.27 Security. Tenant acknowledges that Landlord's security department and security officers (if any) will not be responsible for providing security services in or about the Premises and that all such responsibility is the obligation of Tenant. In no event shall Landlord be liable to Tenant or any third-party for Landlord's security department's failure to respond to a request for aid or assistance by Tenant.

19.28 Project References. Tenant, at its sole expense, agrees to refer to the Project only by such name as permitted by Landlord in designating the location of the Premises in all newspaper or other advertising, stationery, other printed materials and all other references to location and to include the address and identity of its business activity in the Premises in all advertisements made by Tenant in which the address and identity of any other business activity of like character conducted by Tenant within the Cincinnati metropolitan area shall be mentioned.

19.29 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than any payment of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Lease or available at law or in equity. Any check purporting to be an accord and satisfaction must be delivered to the address to which notices are to be sent hereunder (with copies to the addresses to which copies of such notices are to be sent) and not to the address for payments.

19.30 Force Majeure. Landlord and/or Tenant shall be excused for the period of delay in the performance of any of their respective obligations hereunder, except their respective obligation to pay any sums of money due under the terms of this Lease, and shall not be considered in default, when prevented from so performing by cause or causes beyond Landlord's or Tenant's reasonable control, including, but not limited to, all labor disputes, civil commotion, war, fire or other casualty, acts of terrorism, governmental regulations, statutes, ordinances, restrictions or decrees, or through acts of God. Notwithstanding anything to the contrary contained in this Section 19.30, in the event any work performed by Tenant or Tenant's contractors results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse the performance by Tenant as provided for herein.

19.31 Consents. Where in this Lease, or in any rules and regulations imposed by Landlord hereunder, Landlord's or Tenant's consent or approval is required and is expressly not permitted to be unreasonably withheld, such consent or approval shall also not be permitted to be unreasonably conditioned or delayed. Where no consent or approval standard is otherwise specified in this Lease with respect to a particular matter, Landlord may withhold or condition its consent with respect to such matter for any reason or no reason, in Landlord's sole, absolute and subjective discretion.

19.32 Execution in Counterparts; Facsimile Signatures. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which counterparts,

when taken together shall constitute one and the same agreement. Facsimile or electronically transmitted signatures of this Lease shall be accepted by the parties to this Lease as valid and binding and having the same effect as original signatures.

[Signatures begin on the next page.]

IN WITNESS WHEREOF the parties have caused this Lease to be executed, sealed and delivered by themselves or their duly authorized representatives the day and year first above written.

LANDLORD:

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company

By: Riverbanks Renaissance Phase I-A Mezzanine, LLC, a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Joint Venture, LLC, a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Equity, LLC, a Delaware limited liability company, its managing member

By: 
Name: SCOTT D. STANGER
Title: Authorized Representative
(SEAL)


Date Signed: 12/14/10

[Signatures continue on the following page.]

[Signatures continue from the previous page.]

TENANT:

CRGE CINCINNATI, LLC,
an Arizona limited liability company

By: 
Name: FRANK CAPEI
Title: MANAGER

(SEAL)

Date Executed: _____

EXHIBIT "A"

McGill Smith Punshon, Inc. **LEGAL DESCRIPTION OF THE PARCEL**



DESCRIPTION FOR: **CARTER and The Hamilton County Commissioners**
PROJECT LIMITS Phase 1A
LOCATION: **Part of Lot 16B of The Banks Phase IV**
1.3531 Acres Above Elevation 510
And
Part of Lot 26B of The Banks Phase IV
1.9946 Acres Above Elevation 510

Situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

Beginning at the intersection of the south line of Freedom Way (a 70' right-of-way) with the east line of Walnut Street (a 70' right-of-way), said point also being the northwest corner of Lot 16B;

Thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 326.58 feet to a point;

Thence South 9°37'29" East, 160.00 feet to a point;

Thence South 80°22'31" West, 239.92 feet to a point;

Thence South 9°37'29" East, 90.00 feet to a point in a south line of aforesaid Lot 16B;

Thence along southerly lines of said Lot 16B, the following five (5) courses and distances:

1. South 80°22'31" West, 5.67 feet to a point;
2. North 9°37'29" West, 8.00 feet to a point;
3. South 80°22'31" West, 50.00 feet to a point;
4. North 9°37'29" West, 15.00 feet to a point;
5. South 80°22'31" West, 31.00 feet to a point in the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 16B;

Thence along said line of Walnut Street and the west line of said Lot 16B, North 9°37'29" West, 227.00 feet to the point of beginning.

Containing 1.3531 acres of land above an elevation of 510 feet.

Subject to all legal highways, easements and restrictions of record.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

TOGETHER WITH:

Situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

Beginning at a point in the south line of Second Street (an undedicated right-of-way) and in the north line of said Lot 26B of The Banks Phase IV, said point being North 80°22'31" East, 132.50 feet from the northwest corner of Lot 26B and also from the intersection of said south line of Second Street with the east line of Walnut Street (a 70' right-of-way);

Thence along said lines of Second Street and Lot 26B, North 80°22'31" East, 262.25 feet to the intersection of said south line of Second Street with the west line of Main Street (a 70' right-of-way), said point also being the northeast corner of said Lot 26B;

Thence along said lines of Main Street and Lot 26B, South 9°37'29" East, 285.00 feet to the intersection of said west line of Main Street with the north line of Freedom Way (a 70' right-of-way), said point also being the southeast corner of said Lot 26B;

Thence along said lines of Freedom Way and Lot 26B, South 80°22'31" West, 394.75 feet to the intersection of said north line of Freedom Way with the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 26B;

Thence along said line of Walnut St. and west line of Lot 26B, North 9°37'29" West, 91.67 feet to a point;

Thence North 80°22'31" East, 132.50 feet to a point;

Thence North 9°37'29" West, 193.33 feet to the point of beginning.

Containing 1.9946 acres of land above an elevation of 510 feet.

Subject to all legal highways, easements and restrictions of record.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

Prepared by: McGill Smith Punshon, Inc.

Date: September 22, 2008

MSP No.: 99327.27

EXHIBIT "B"
DEPICTION OF PREMISES

EXHIBIT "C"

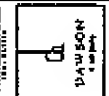
SITE PLAN



MOODY-NOLAN, INC.
architect + design
1000 N. W. 10th Ave.
Suite 1000
Fort Lauderdale, FL 33304
Tel: 954.561.1234
Fax: 954.561.1235
www.moody-nolan.com



CARTER
CONSULTING



PAWSON
CONSULTING

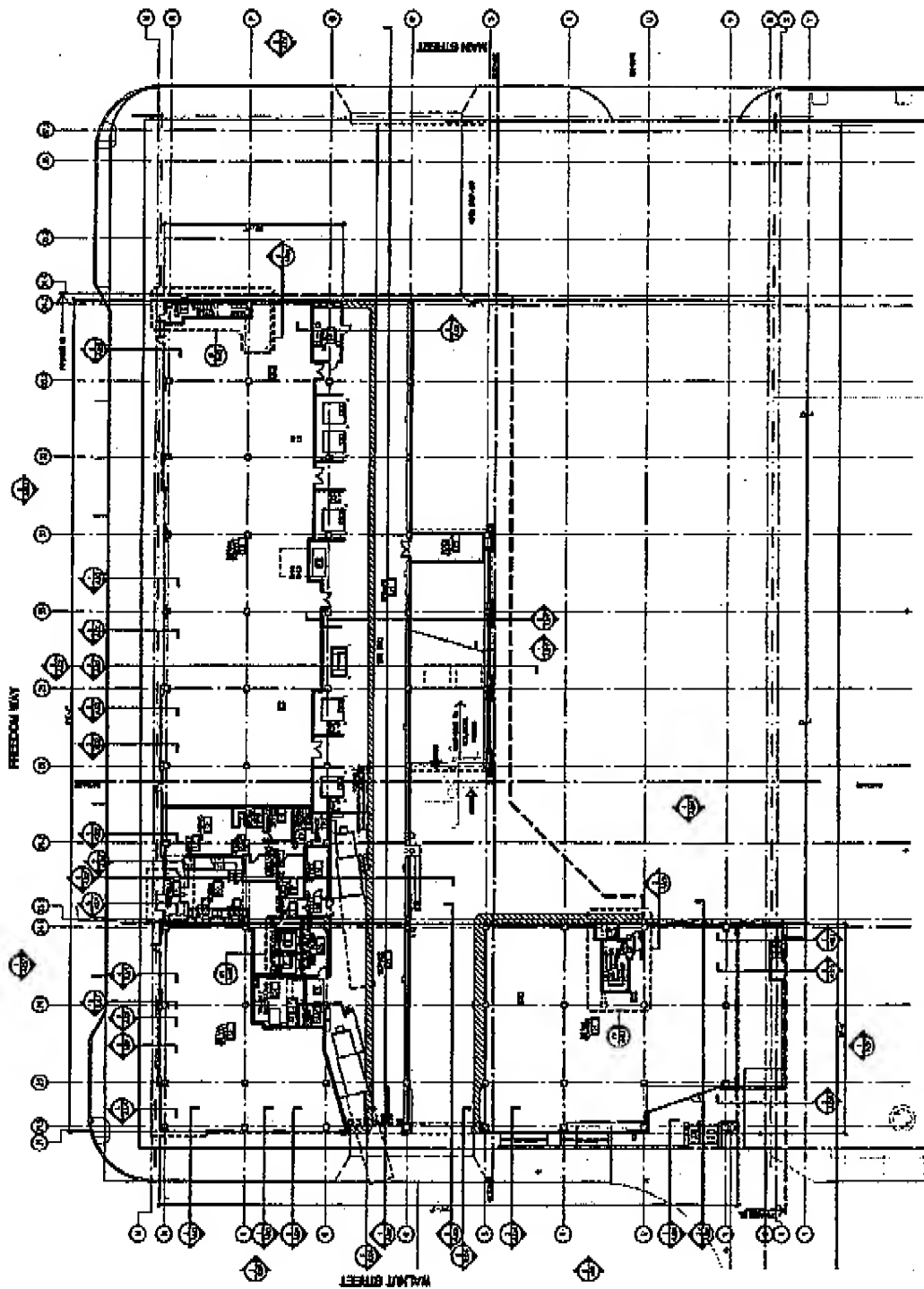
DATE: 02/08/2013
BY: [Signature]

THE SHAW
PHASE 1A

PROJECT NO.
10000000000000000000

LOT 1A
FIRST FLOOR
PLAN

A051



FIRST FLOOR PLAN



EXHIBIT "D"

DESCRIPTION OF LANDLORD'S AND TENANT'S WORK

I. LANDLORD'S WORK

Landlord will be required to perform only the following items of work in connection with the initial improvement of the Premises:

- A. Exterior Walls: Exterior walls will be exposed concrete within the Premises.
- B. Storefronts: Landlord will provide and install a base pre-finished glass and aluminum storefront with double doors. Doors will be located as shown on the L.O.D.
- C. Floor: TBD based on type of construction. Tenant would like to complete undergrounds before floor is poured.
- D. Demising Walls: Demising partitions between Tenant and other tenants shall be (1) hour rated 5/8" drywall/metal stud construction. Partition shall extend from the finished floor slab to the underside of the steel structure and/or existing ceiling. All walls up to Landlord's standard ceiling height, will be taped, and primed ready for tenant's paint finish. Tenant shall provide all other interior drywall partitions and finishes above and beyond the perimeter. The exterior walls of the Premises shall not be provided with drywall.
- E. Ceiling: Ceiling will be exposed to the underside of the roof above.
- F. Electrical: Landlord will provide individually metered 120/208 volt, 3 phase and 277/480 volt, 3-phase electrical service for distribution within the Premises by the Tenant. A minimum of 1,600 amps is required (to be reviewed)
 - Outlets: Landlord will provide (1) convenience outlet located near the electrical panel per the L.O.D.
- G. HVAC: Landlord will provide rooftop unit(s) sized at no less than (1) ton per 150 square feet. Ducting and distribution is to be completed by the Tenant. Thermostats are to be provided by Landlord. Landlord will provide access to available shaft and welded ductwork for grease exhaust. Make up air and general exhaust are to be provided by Tenant and vented through Tenant's storefront. Tenant shall purchase and install Landlord specified condenser water meters to allow for compatibility with sub-metering system.
- H. Plumbing: Landlord will provide 6" sanitary waste-line under slab of Premises. Landlord will provide a 6" water line with individual meter to the Premises. Landlord to install grease trap at Landlord's expense.
- H. Fire Sprinklers: Fire Sprinkler main and branches with heads turned up.
- J. Telephone: Landlord to provide a Telephone Terminal Board with an empty telephone conduit installed from the Premises to a telephone room located within the common area of the building. Individual switchgear, wiring, equipment installation and services are not supplied by the Landlord, and shall be part of Tenant's work.
- K. Stairs/elevators: Not applicable.
- L. Fire Alarm: Landlord to provide detectors adequate for shell space per code, tied back to base building system with one relay. Tenant to use Landlord's fire alarm contractor to reconfigure fire alarm system as required by Tenant fit-up. Tenant to be responsible for all fees and inspections for fire alarm expansion.
- M. Soundproofing/Noise Restrictions: Tenant is responsible for complying with all legal requirements and restrictions regarding noise levels, noise containment and noise abatement with respect to their space, including but not limited to, music, entertainment and excessive noise from business operations.

Except as otherwise expressly set forth above, the foregoing work will be performed to such standards, use such materials and be constructed according to such methods as Landlord shall determine in its sole and absolute discretion.

II. TENANT'S WORK

All items not listed above are the responsibility of Tenant at the Tenant's cost.

Tenant is responsible for payment of all meter & utility fees including meter tap fees.

All Tenant and its contractors shall be required to follow the tenant construction manual to be provided under separate cover.

Landlord will require tenant to submit drawings for Design Criteria compliance. One (1) Preliminary review and One (1) Final review will be conducted.

Except for Landlord's Work, all work on the Premises shall be Tenant's Work and shall be subject to Landlord's prior written consent. Tenant shall secure Landlord's written approval and all necessary licenses and permits prior to commencement of Tenant's Work.

III. LANDLORD'S CONTRIBUTION TO TENANT'S WORK - REIMBURSEMENT CONDITIONS

Landlord agrees to reimburse Tenant up to the amount stated in the Basic Lease Terms section of the Lease as "Landlord's Contribution to Tenant's Work" for Tenant's cost of Tenant's Work. Such sum shall be due and payable in four (4) installments as follows:

1. ten percent (10%) upon the thirtieth (30th) day after the mutual execution and delivery of this Lease;
2. twenty percent (20%) within fifteen (15) days following the commencement of Tenant's Work and Landlord's receipt of paid Invoices for completed Tenant's Work in an amount equal to at least thirty percent (30%) of the total of Landlord's Contribution to Tenant's Work and the satisfaction of items (a), (b) and (e) of Landlord's Contribution Conditions set forth below;
3. forty percent (40%) within fifteen (15) days following Tenant's completion of at least fifty percent (50%) of Tenant's Work and Landlord's receipt of paid Invoices for completed Tenant's Work in an amount equal to at least seventy percent (70%) of the total of Landlord's Contribution to Tenant's Work and the satisfaction of items (a), (b) and (e) of Landlord's Contribution Conditions set forth below; and
4. the remaining thirty percent (30%) upon satisfaction of all of the Landlord's Contribution Conditions.

Upon the completion of Tenant's Work, Tenant shall notify Landlord and Landlord shall inspect the Premises and either approve or object to Tenant's Work within fifteen (15) days after receipt of Tenant's notice of completion. Landlord's obligations to reimburse Tenant any remaining balance of Landlord's Contribution to Tenant's Work shall be conditioned upon the following (collectively, the "Landlord's Contribution Conditions"): (a) Landlord's written approval of the finished Tenant's Work; (b) there being no liens or preliminary notices of lien rights filed with respect to Tenant's Work; (c) Tenant's furnishing Landlord with the names of all contractors, subcontractors and material suppliers and other potential lien claimants engaged in Tenant's Work, affidavits from each of them giving the amount of all obligations for labor and material furnished by them (the aggregate total amount of such costs is referred to herein as the "Tenant's Work Costs"), including a final contractor's affidavit and final, unconditional lien waivers satisfactory to Landlord for purposes of dissolving any liens, and releases from each of them of all liens and claims against Landlord or Tenant, or satisfactory indemnification against such liens and claims; (d) Tenant's submission of all permits necessary for Tenant's Work and occupancy of the Premises, including, without limitation, a final certificate of occupancy; (e) no Event of Default having occurred under this Lease; (f) Tenant's having opened the Premises for business, fully stocked and staffed; (g) Tenant having paid the first payment of Base Rent due under this Lease; and (h) Tenant providing to Landlord final as-built plans for all Tenant Work. Any dispute between the parties with respect to Tenant's Work shall be settled by arbitration in accordance with the Construction Arbitration Rules of the American Arbitration Association as amended and in effect on the date notice is given of the intention to arbitrate. The determination of the arbitrators shall be final, binding and conclusive on all the

parties, and judgment may be rendered thereon by any court having jurisdiction, upon application of either Landlord or Tenant.

IV. ARCHITECTURAL AND CONSTRUCTION STANDARDS

All Tenant's Work under all classifications shall conform to the following architectural and construction standards:

A. Signs. Signs shall have no exposed lighting source, no flashing or scintillating or moving lights. All of Tenant's signs must be approved by Landlord in writing, and are subject to Exhibit "H".

B. Store Fronts and Entrances. Landlord may, at its option, require coordinated treatment of the fascia or facade of the store front or of the fascia of the marquee. All swinging or sliding doors must be recessed in such manner that any door opening to the public walk will not cross the general store line.

C. Projection Beyond Lines. No store front or any part thereof shall project beyond the exterior perimeter of the Premises, with the exception of signs approved by Landlord.

D. Signs. All store fronts and signs shall be subject to the Declaration.

Tenant is responsible for payment of all meter and utility fees including meter tap fees.

Tenant and all its contractors shall be required to follow the tenant construction manual (the "TCM"). Tenant acknowledges its receipt of the TCM and agrees that the TCM forms a part of this Lease, except to the extent the TCM is expressly contradicted by any provision of this Lease. In accordance with Section 6.3(a), Tenant or its general contractor must, prior to commencing any of Tenant's Work, post a security deposit with Landlord in the amount of \$5,000.00. Such amount will be refunded within thirty (30) days after completion of all of Tenant's Work and Tenant's opening for business to the public if Tenant has fully complied with the terms of the Lease at all times prior to the date of such refund.

Landlord will require tenant to submit drawings for Design Criteria compliance. One (1) Preliminary review and One (1) Final review will be conducted.

EXHIBIT "E"

FORM OF GUARANTY

STATE OF _____
COUNTY OF _____

GUARANTY (INDIVIDUAL)

KNOW ALL MEN BY THESE PRESENTS:

In consideration of the letting by Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Landlord") to CRGE Cincinnati, LLC, an Arizona limited liability company ("Tenant") pursuant to a Retail Lease Agreement dated _____, 2010 (the "Lease") of premises described therein, the delivery of which lease is conditioned upon the execution and delivery of this Guaranty, and the payment of One Dollar (\$1.00) to the undersigned by Landlord, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned Frank Capri (hereinafter collectively called the "Guarantor") does hereby unconditionally guarantee the full, prompt and complete payment and performance by Tenant of all of the terms, covenants, conditions and agreements contained in the Lease on the part of Tenant to be performed, including specifically, without limitation, the obligation to pay all rents and any other charges or obligations therein set forth and the obligations regarding "Hazardous Material" defined in the Lease, together with any and all renewal or renewals, extension or extensions, modifications or modifications thereof, and substitution or substitutions therefor (all such obligations collectively, the "Obligations"). This is a guaranty of payment and performance and not merely of collection.

Guarantor waives presentment, demand, dishonor, notice of dishonor, protest, and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of the existence or creation of the Obligations, and of all defaults, disputes or controversies with Tenant, and of the settlement, compromise or adjustment thereof. Guarantor agrees that Landlord shall have full authority, without obtaining the consent of, giving notice to, or affecting the liability of Guarantor, to make changes of terms, to extend time to pay, to release the whole or any part of the Obligations, to settle or compound differences for less than the full amount owing under the Lease, to accept notes, trade acceptances or any other form of obligation for the Obligations, to make arrangements or settlements in or out of court in the case of receivership, liquidation, readjustment, bankruptcy, reorganization, arrangement or an assignment for the benefit of creditors and to do anything, whether or not herein specified, which may be done or waived by or between Landlord and Tenant. The making of such arrangements, settlements, compromises, adjustments, extensions of time and so forth shall not diminish, discharge, modify, reduce, extinguish or otherwise affect the liability of Guarantor hereunder for the full amount owing under the Lease. Guarantor further agrees that no act or omission on the part of Landlord shall in any way affect, impede or impair this guaranty. Guarantor waives any rights of subrogation, reimbursement, exoneration, contribution or indemnity and any rights or claims of any nature or kind against Tenant which arise out of or are caused by this Guaranty and any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security (including any security deposit) now or hereafter held by Landlord.

This guaranty shall be enforceable without Landlord having (i) to proceed first against Tenant (any right to require Landlord to take action against Tenant being hereby expressly waived) or against any security for any payments due under the Lease, or (ii) to exercise any of Landlord's remedies under the Lease; and this guaranty shall be effective regardless of the solvency or insolvency of Tenant, any reorganization, merger or consolidation of Tenant, any change in the composition, nature, personnel or location of Tenant, or any bankruptcy, receivership, liquidation, reorganization or other proceeding involving Tenant.

This guaranty shall be binding upon and enforceable against each person and entity executing this guaranty and upon the respective heirs, legal representatives, successors and assigns of each such

person and entity. The liability of each person and entity executing this guaranty and the heirs, legal representatives, successors and assigns of each such entity and person hereunder is joint and several, primary and unconditional, and shall not be subject to any claim of offset, counterclaim or defense of Tenant.

This guaranty shall be continuing, irrevocable, absolute and unconditional and shall remain in full force and effect as to Guarantor until such time as all of the Obligations shall have been paid or satisfied in full; provided however, that if no Event of Default (as defined in the Lease) has occurred, and provided that no condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default, this Guaranty, and Guarantor's obligations hereunder, will automatically expire upon the day that Tenant has completed all of Tenant's Work and has lawfully opened the Premises for business to the public. No delay or failure on the part of Landlord in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Landlord of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Guarantor agrees that this guaranty shall not be affected by reason of assertion by Landlord against Tenant of any rights or remedies reserved to Landlord in the Lease, or by reason of any summary or other proceedings against Tenant, or by the amendment or modification of the Lease with or without notice to, or consent of, the Guarantor.

This guaranty shall remain in full force and effect, and Guarantor shall continue to be liable for the payment of all amounts owing under the Lease, in accordance with the original terms of the documents and instruments evidencing the same, notwithstanding the commencement of any bankruptcy, reorganization or other debtor relief proceeding by or against Tenant, and notwithstanding any modification, discharge or extension of the Obligations, any modification or amendment of any document or instrument evidencing any of the Obligations, any stay of the exercise by Landlord of any of its rights and remedies against Tenant with respect to any of the Obligations, or any cure of any default by Tenant under any document or instrument evidencing any of the Obligations, which may be effected in connection with any such proceeding, whether permanent or temporary, and notwithstanding any assent thereto by Landlord.

Landlord may, without notice of any kind, sell, assign or transfer the Lease, and in such event each and every immediate and successive assignee, transferee or holder of the Lease shall have the right to enforce this guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such person were herein by name specifically given such rights, powers and benefits, but Landlord shall have an unimpaired right to enforce this guaranty for its benefit as to so much of the Obligations as Landlord has not sold, assigned, or transferred.

This guaranty has been made and delivered in the State of Ohio and shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Ohio. Wherever possible, each provision of this guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guaranty shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this guaranty.

Guarantor hereby submits to personal jurisdiction in the State of Ohio for the enforcement of this guaranty and waives any and all personal rights under the laws of the State of Ohio or the United States to object to jurisdiction within the State of Ohio for the purposes of litigation to enforce this guaranty. In the event that such litigation is commenced, Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by the serving of a copy of the summons and complaint upon Guarantor at the following address:

Frank Capri
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Nothing contained herein shall prevent Landlord from bringing any action or exercising any rights against any security given to Landlord by Tenant or Guarantor, or against Guarantor personally, or against any property of Guarantor, within any other state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of the agreement that the laws of the State of Ohio shall govern the rights and obligations of Guarantor and Landlord hereunder or of the submission made by Guarantor to personal jurisdiction within the State of Ohio. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Ohio.

Guarantor warrants and represents to Landlord that any financial statements heretofore delivered by Guarantor to Landlord were true and correct in all respects as of the date delivered to Landlord. At any time this Guaranty is in effect, Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

Guarantor agrees that Guarantor shall have no right to recover against Tenant by way of subrogation to the rights of Landlord on account of any payment by Guarantor to Landlord hereunder until all of the Obligations have been paid and satisfied in full, and Guarantor hereby waives, releases and relinquishes any such rights of subrogation to such extent.

If Guarantor is a corporation, Guarantor and the persons executing this guaranty as officers of the Guarantor represent that Guarantor has full corporate authority to execute this guaranty and that the officers executing this guaranty are duly authorized to execute this guaranty on behalf of the corporation, and that there is no provision in its charter or bylaws that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor. Guarantor further represents that there is no provision of any other agreement by which Guarantor is bound that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor.

IN WITNESS WHEREOF, Guarantor has executed, sealed and delivered this Guaranty, all this _____ day of _____, 2010.

INDIVIDUAL:

**Signed, sealed and delivered in the presence of:

_____(Seal)
Name: Frank Capri

Unofficial Witness

Address: 7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85261

Notary Public

My Commission Expires:

(NOTARIAL SEAL)

****SIGNATURE IS TO BE WITNESSED BY AN INDIVIDUAL (AS UNOFFICIAL WITNESS) AND BY A
NOTARY PUBLIC WHO SHOULD AFFIX HIS OR HER NOTARIAL SEAL AND INDICATE THE
EXPIRATION DATE OF HIS OR HER COMMISSION BELOW THE SIGNATURE LINE.**

FORM OF GUARANTY

STATE OF _____
COUNTY OF _____

GUARANTY (CORPORATE)

KNOW ALL MEN BY THESE PRESENTS:

In consideration of the letting by Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Landlord") to CRGE Cincinnati, LLC, an Arizona limited liability company ("Tenant") pursuant to a Retail Lease Agreement dated _____, 2010 (the "Lease") of premises described therein, the delivery of which lease is conditioned upon the execution and delivery of this Guaranty, and the payment of One Dollar (\$1.00) to the undersigned by Landlord, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned Capri Concepts, LLC, an Arizona limited liability company (hereinafter collectively called the "Guarantor") does hereby unconditionally guarantee the full, prompt and complete payment and performance by Tenant of all of the terms, covenants, conditions and agreements contained in the Lease on the part of Tenant to be performed, including specifically, without limitation, the obligation to pay all rents and any other charges or obligations therein set forth and the obligations regarding "Hazardous Material" defined in the Lease, together with any and all renewal or renewals, extension or extensions, modifications or modifications thereof, and substitution or substitutions therefor (all such obligations collectively, the "Obligations"). This is a guaranty of payment and performance and not merely of collection.

Guarantor waives presentment, demand, dishonor, notice of dishonor, protest, and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of the existence or creation of the Obligations, and of all defaults, disputes or controversies with Tenant, and of the settlement, compromise or adjustment thereof. Guarantor agrees that Landlord shall have full authority, without obtaining the consent of, giving notice to, or affecting the liability of Guarantor, to make changes of terms, to extend time to pay, to release the whole or any part of the Obligations, to settle or compound differences for less than the full amount owing under the Lease, to accept notes, trade acceptances or any other form of obligation for the Obligations, to make arrangements or settlements in or out of court in the case of receivership, liquidation, readjustment, bankruptcy, reorganization, arrangement or an assignment for the benefit of creditors and to do anything, whether or not herein specified, which may be done or waived by or between Landlord and Tenant. The making of such arrangements, settlements, compromises, adjustments, extensions of time and so forth shall not diminish, discharge, modify, reduce, extinguish or otherwise affect the liability of Guarantor hereunder for the full amount owing under the Lease. Guarantor further agrees that no act or omission on the part of Landlord shall in any way affect, impede or impair this guaranty. Guarantor waives any rights of subrogation, reimbursement, exoneration, contribution or indemnity and any rights or claims of any nature or kind against Tenant which arise out of or are caused by this Guaranty and any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security (including any security deposit) now or hereafter held by Landlord.

This guaranty shall be enforceable without Landlord having (i) to proceed first against Tenant (any right to require Landlord to take action against Tenant being hereby expressly waived) or against any security for any payments due under the Lease, or (ii) to exercise any of Landlord's remedies under the Lease; and this guaranty shall be effective regardless of the solvency or insolvency of Tenant, any reorganization, merger or consolidation of Tenant, any change in the composition, nature, personnel or location of Tenant, or any bankruptcy, receivership, liquidation, reorganization or other proceeding involving Tenant.

This guaranty shall be binding upon and enforceable against each person and entity executing this guaranty and upon the respective heirs, legal representatives, successors and assigns of each such person and entity. The liability of each person and entity executing this guaranty and the heirs, legal representatives, successors and assigns of each such entity and person hereunder is joint and several,

primary and unconditional, and shall not be subject to any claim of offset, counterclaim or defense of Tenant.

This guaranty shall be continuing, irrevocable, absolute and unconditional and shall remain in full force and effect as to Guarantor until such time as all of the Obligations shall have been paid or satisfied in full; provided however, that if no Event of Default (as defined in the Lease) has occurred, and if no condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default, this Guaranty, and Guarantor's obligations hereunder, will automatically expire upon the expiration of the third (3rd) full calendar year following the day that Tenant has completed all of Tenant's Work and lawfully opened the Premises for business to the public. No delay or failure on the part of Landlord in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Landlord of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Guarantor agrees that this guaranty shall not be affected by reason of assertion by Landlord against Tenant of any rights or remedies reserved to Landlord in the Lease, or by reason of any summary or other proceedings against Tenant, or by the amendment or modification of the Lease with or without notice to, or consent of, the Guarantor.

This guaranty shall remain in full force and effect, and Guarantor shall continue to be liable for the payment of all amounts owing under the Lease, in accordance with the original terms of the documents and Instruments evidencing the same, notwithstanding the commencement of any bankruptcy, reorganization or other debtor relief proceeding by or against Tenant, and notwithstanding any modification, discharge or extension of the Obligations, any modification or amendment of any document or Instrument evidencing any of the Obligations, any stay of the exercise by Landlord of any of its rights and remedies against Tenant with respect to any of the Obligations, or any cure of any default by Tenant under any document or instrument evidencing any of the Obligations, which may be effected in connection with any such proceeding, whether permanent or temporary, and notwithstanding any assent thereto by Landlord.

Landlord may, without notice of any kind, sell, assign or transfer the Lease, and in such event each and every immediate and successive assignee, transferee or holder of the Lease shall have the right to enforce this guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such person were herein by name specifically given such rights, powers and benefits, but Landlord shall have an unimpaired right to enforce this guaranty for its benefit as to so much of the Obligations as Landlord has not sold, assigned, or transferred.

This guaranty has been made and delivered in the State of Ohio and shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Ohio. Wherever possible, each provision of this guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guaranty shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this guaranty.

Guarantor hereby submits to personal jurisdiction in the State of Ohio for the enforcement of this guaranty and waives any and all personal rights under the laws of the State of Ohio or the United States to object to jurisdiction within the State of Ohio for the purposes of litigation to enforce this guaranty. In the event that such litigation is commenced, Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by the serving of a copy of the summons and complaint upon Guarantor at the following address:

Capri Concepts, LLC
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Nothing contained herein shall prevent Landlord from bringing any action or exercising any rights against any security given to Landlord by Tenant or Guarantor, or against Guarantor personally, or against any property of Guarantor, within any other state. Commencement of any such action or proceeding in any

other state shall not constitute a waiver of the agreement that the laws of the State of Ohio shall govern the rights and obligations of Guarantor and Landlord hereunder or of the submission made by Guarantor to personal jurisdiction within the State of Ohio. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Ohio.

Guarantor warrants and represents to Landlord that any financial statements heretofore delivered by Guarantor to Landlord were true and correct in all respects as of the date delivered to Landlord. At any time this Guaranty is in effect, Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

Guarantor agrees that Guarantor shall have no right to recover against Tenant by way of subrogation to the rights of Landlord on account of any payment by Guarantor to Landlord hereunder until all of the Obligations have been paid and satisfied in full, and Guarantor hereby waives, releases and relinquishes any such rights of subrogation to such extent.

If Guarantor is a corporation, Guarantor and the persons executing this guaranty as officers of the Guarantor represent that Guarantor has full corporate authority to execute this guaranty and that the officers executing this guaranty are duly authorized to execute this guaranty on behalf of the corporation, and that there is no provision in its charter or bylaws that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor. Guarantor further represents that there is no provision of any other agreement by which Guarantor is bound that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor.

IN WITNESS WHEREOF, Guarantor has executed, sealed and delivered this Guaranty, all this _____ day of _____, 2010.

CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY:

**Signed, sealed and delivered in the presence of:

CRQE CINCINNATI, LLC, an Arizona limited liability company

Unofficial Witness

By: _____ (Seal)

Name: _____

Title: _____

Notary Public

(CORPORATE SEAL)

My Commission Expires: _____

Address: 7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

(NOTARIAL SEAL)

****SIGNATURE IS TO BE WITNESSED BY AN INDIVIDUAL (AS UNOFFICIAL WITNESS) AND BY A NOTARY PUBLIC WHO SHOULD AFFIX HIS OR HER NOTARIAL SEAL AND INDICATE THE EXPIRATION DATE OF HIS OR HER COMMISSION BELOW THE SIGNATURE LINE.**

EXHIBIT "F"

RULES AND REGULATIONS

1. Other than Tenant's standard signage identifying the Premises as Toby Keith's I Love This Bar and Grill, no sign, picture, advertisement or notice visible from the exterior of the Premises shall be installed, affixed, inscribed, painted or otherwise displayed by Tenant on or in any part of the Premises or the Building unless the same is first approved by Landlord. Any such sign, picture, advertisement or notice approved by Landlord shall be painted or installed for Tenant at Tenant's cost by Landlord or by a party approved by Landlord. No awnings, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of, the Premises without the prior consent of Landlord, including approval by Landlord of the quality, type, design, color and manner of attachment.
2. Business machines and mechanical equipment belonging to Tenant that cause noise and/or vibration that may be transmitted to the structure of the Building or to any leased space so as to be objectionable to Landlord or any other tenants in the Building shall be placed and maintained by Tenant, at Tenant's expense, in setting of cork, rubber, or spring type noise and/or vibration eliminators sufficient to eliminate vibration and/or noise.
3. The Premises shall not be used for sleeping or lodging. No cooking or related activities shall be done or permitted by Tenant in the Premises except with permission of Landlord. No part of said Building or Premises shall be used by Tenant for gambling, immoral or other unlawful purposes.
4. No birds or animals of any kind shall be brought into the Building (other than trained seeing-eye dogs required to be used by the visually impaired).
5. No windows, floors or skylights that reflect or admit light into the Building shall be covered or obstructed by Tenant. Toilets, wash basins and sinks, or any other plumbing fixture or appliance, shall not be used for any purpose other than those for which they were constructed, and no sweeping, rubbish, or other obstructing or improper substances shall be thrown or placed therein. The cost of repairing any stoppage or damage resulting to any such fixtures or appliances from misuse on the part of Tenant or any person in the Premises at the invitation or with the permission of Tenant shall be paid by Tenant. Any damage resulting to any such item, or to heating apparatus, from misuse by Tenant or any such person shall be borne by Tenant.
6. Tenant shall not permit any gases, liquids or odors to be produced upon or permeate from the Premises, and Tenant shall not permit any flammable, combustible or explosive fluid, chemical or substance to be brought into the Premises.
7. No connection shall be made to the electric wires or gas or electric fixtures, without the prior written consent on such each occasion of Landlord. All glass, locks and trimmings in or upon the doors and windows of the Premises shall be kept whole by Tenant and in good repair. Tenant shall not injure, overload or deface the Building or any woodwork or the walls of the Premises.
8. Landlord shall have the right to change the name of the Project, the Building or the Retail Facility and to change the street address of the Building.
9. Landlord may waive any one or more of these Rules and Regulations for the benefit of Landlord or of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the other tenants of the Building.
10. These Rules and Regulations are supplemental to, and shall not be construed in any way as modifying or amending, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Building.

11. Landlord reserves the right to enforce the restrictions and limitations contained in the Lease, to make such other reasonable Rules and Regulations as in its judgment may from time to time be desirable for the safety, care and cleanliness of the Building, the management thereof, or the preservation of good order therein, so long as such other Rules and Regulations do not materially interfere with Tenant's rights set forth in this Lease or increase any monetary obligations of Tenant set forth in this Lease.

EXHIBIT "G"

SPECIAL STIPULATIONS

To the extent that the following Special Stipulations conflict with any of the printed provisions of this Lease, the Special Stipulations shall control.

EXHIBIT "H"

SIGN CRITERIA

Landlord has delivered to Tenant, and Tenant acknowledges receipt of, Sign Criteria prepared for the Honorable City Planning Commission, Cincinnati, Ohio, dated February 19, 2010. Additional copies thereof are available upon request. Such Sign Criteria are incorporated herein by this reference.

EXHIBIT "H-1"

TENANT'S APPROVED SIGNAGE

[Intentionally Omitted]

EXHIBIT "I"

PROHIBITED USES

1. Prohibited Uses. The following uses are prohibited on any Banks Parcel:

(a) **Fire Hazard.** Any use which produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazards, including the storage, display or sale of explosives or fireworks other than professional fireworks shows for special events, provided that ordinary use of heating implements in accordance with Legal Requirements (including ordinary use of grills and ovens and similar cooking appliances or structures in accordance with Legal Requirements in restaurants, grocery stores or other retail facilities), shall not violate this provision.

(b) **Gun-Related Uses.** Any shooting gallery, gun range, or gun shop; provided that a gun department that is part of but not the primary use of a sporting goods store, outdoor recreation store, department store, or other retail operation is permitted.

(c) **Amusement Gallery.** Any amusement gallery, video game arcade, or "virtual reality" establishment (an "Amusement Use"), except that the following Amusement uses shall be permitted:

- (i) any Amusement Use which is an ancillary use within a restaurant, movie theatre or other retail operation;
- (ii) any Amusement Use which is marketed for use by persons eighteen years of age and older and is used primarily by persons eighteen years of age and older; and
- (iii) any Amusement Use which is marketed for use by persons younger than eighteen years of age, provided that there is sufficient adult personnel in attendance at the establishment at all times when the establishment is open for business in order to maintain order and proper decorum.

(d) **Nuisance; Flashing Lights.** Any use that: (i) constitutes a public or private nuisance; or (ii) emits or generates an obnoxious odor, noise, litter, dust or dirt, or flashing or "strobe" lights (except for signs complying with Legal Requirements), insofar as any of the foregoing items can be heard, smelled or seen outside of any building. For the purposes of this provision: (i) ordinary odors of food and beverage preparation emanating from restaurants and other retail establishments shall not be considered obnoxious; (ii) grease trap odors, dumpster odors and the like that are perceptible from inside a building shall be considered obnoxious; and (iii) music that cannot be heard inside a building on a floor above storefront level shall not be considered obnoxious.

(e) **"Fire Sales".** Any "fire sale," "going out of business" sale or bankruptcy sale (except as may be required by court order) or auction sale except for auctions of fine art, fine jewelry, fine books, fine furnishings, and the like.

(f) **Funeral Parlors.** Any funeral parlor, mortuary or funeral home.

(g) **Massage Parlors.** Any massage parlor; provided that massage facilities in First Class health clubs, First Class spas and the like are permitted.

(h) **Nude Entertainment.** Any establishment featuring striptease, nude, "topless," or similar adult entertainment; provided that the foregoing restriction shall not prohibit the showing, sale or rental of movies or similar media that are being shown, offered for sale, or rented nationally to general

audiences or in nationally recognized stores or live theatrical performance that contain incidental nudity or similar adult entertainment; provided further, that nothing in this Section 2.2(h) shall apply to entertainment within private residences.

(l) **Pornographic Materials.** Any establishment that devotes more than a minor or incidental portion of its floor area to sexually explicit or pornographic materials or receives more than a minor or incidental portion of its gross revenues from the sale of such materials.

(j) **Paraphernalia for Illegal Drug Use.** Any establishment that sells paraphernalia for illegal drug use.

(k) **Certain Clubs and Bars.** Any nightclub, discotheque, dance hall or barroom whose sales of food do not constitute at least 30% of its gross sales; provided that any barroom within a hotel, any barroom devoted primarily to sales of wine, and any brewpub is allowed.

(i) **Industrial Uses.** Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, refining, smelting, industrial, drilling or mining operation and any distilling operation except for a distilling operation incidental to a restaurant or a brewpub.

(m) **Agricultural Uses.** Any agricultural use; provided that a greenhouse operation or the sale of food or agricultural products grown elsewhere shall be permitted;

(n) **Flea Markets.** A flea market, pawn shop or thrift store.

(o) **Stockyards.** Any stockyard, slaughterhouse or livestock sales pavilion; provided that pet shops with or without ancillary kennel and veterinary facilities and operations are permitted.

(p) **Junkyard.** Any junkyard or any dumping, disposal, incineration or reduction of garbage, sewerage, dead animals or refuse except for disposal, incineration or reduction of garbage, sewerage or refuse generated on a Banks Parcel to the extent permitted by Legal Requirements.

(q) **Dry Cleaning Plants; Certain Laundry Facilities.** Any commercial laundry, dry cleaning plant, or laundromat; provided that the prohibition against a commercial laundry or laundromat shall not be applicable to (i) facilities for on-site drop-off and pickup service for drycleaning performed off-site, (ii) laundry facilities provided in a residential building for the residents of such building, or (iii) laundry facilities within a hotel or temporary lodging facility.

(r) **Gambling.** Except to the extent customary in a First Class mixed use retail/residential/office real estate project, any gambling facility or operation, including but not limited to off-track or sports betting parlors, table games such black-jack or poker, slot machines, video poker/black-jack machines or similar devices or a bingo hall; provided that this prohibition shall not apply to the sale of governmental sponsored lottery tickets which are incidental to any business operation or bingo or other operations carried on by a religious or charitable organization.

2. Outdoor Activities. Certain outdoor activities on the Banks Project Lots shall be restricted as follows:

(a) **Outdoor Dining Areas.**

(i) **General Restrictions.** Any restaurant operator that owns or leases space within any building on a Banks Parcel may use portions of the outdoor space owned or adjacent to its leased space specifically designed therefore (any such outdoor space being called an "Outdoor Dining Area") for outdoor dining. Outdoor dining shall be permitted to be conducted in any Outdoor Dining Area only during the hours of 7:00 a.m. until 2:00 a.m. every day. Within any Outdoor Dining Area, the restaurant operator may place tables, chairs, hostess stations, waitress stations, heating implements, ice machines and bars, so long as each of the foregoing is easily portable, and such

restaurant operator may provide outside connections to sanitary sewer and water lines in any Outdoor Dining Area. Any restaurant operator that uses an Outdoor Dining Area shall clean its Outdoor Dining Area and maintain it at all times in an orderly, sanitary and First Class condition, and all outdoor furniture used in any Outside Dining Area must be First Class.

(ii) Sound and Light Restrictions. Each Outdoor Dining Area located on Lot 16B and Lot 26B shall be subject to the following additional restrictions. Subject to the exceptions set forth below, from and after the date that the City issues a permanent certificate of occupancy for the first residential unit within Lot 16B (each such residential unit within Lot 16B herein an "Affected Residential Unit"): (A) the applicable restaurant operator shall not allow amplified sound within its respective Outdoor Dining Area beyond 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday or beyond 11 :00 p.m. on any Friday or Saturday; and (B) other than in the event of an emergency, no artificial lights (whether permanent or temporary) located in or serving an Outdoor Dining Area shall be pointed at the building facade of any Affected Residential Unit, and the applicable restaurant operator shall ensure that all artificial lights (whether permanent or temporary) located in or serving its respective Outdoor Dining Area shall either be pointed away from the building facade of any Affected Residential Unit or otherwise shielded from the building facade of any Affected Residential Unit so as to avoid casting light through the windows located on such facades at night. The sound restriction set forth in clause (A) above shall be subject to the following exceptions:

(i) On no more than 35 evenings per calendar year, the hours during which each applicable restaurant operator may allow amplified sound within its respective Outdoor Dining Area may be extended to 12:00 midnight.

(ii) During Major Public Festivals (defined herein as large public events such as, but not limited to, Riverfest, Taste of Cincinnati, Oktoberfest and the Jazz Festival), the hours during which each applicable restaurant operator may allow amplified sound within its respective Outside Dining Area may be extended to 12:00 midnight. Extensions of hours for amplified sound for Major Public Festivals occurring on Thursdays, Fridays, Saturdays or Sundays shall not count against the 35 evenings per calendar year provided for in subsection (i) above. Extensions of hours for amplified sound for Major Public Festivals occurring on Mondays, Tuesdays or Wednesdays shall count against the 35 evenings per calendar year provided for in subsection (i) above.

(b) Special Events. Any Banks Owner may use portions of the Banks Project Lots designed for outdoor events (collectively, the "Public Plaza Areas") for First Class special activities and events, so long as such activities and events: (i) are conducted in a safe and orderly manner and in compliance with Legal Requirements and all other provisions of any Declaration; (ii) are in keeping with the quality and perception of the Banks Project as a First Class urban mixed-use project; and (iii) will not create such amounts of noise, congestion, odors or light as to disrupt or interfere with the normal and customary use and enjoyment by other Banks Owners of their Banks Parcels, or with the normal and customary use and enjoyment by tenants of their respective leased premises located within the Banks Project. Examples of activities or events that may be conducted in the Public Plaza Areas (for illustrative purposes only and provided that such activities or events comply with the foregoing provisions of this Section 2(b)) are art shows, antique festivals and certain types of live performances. No activities or events shall be conducted in the Public Plaza Areas at any time before 9:00 a.m. or after 2:00 a.m., unless all Banks Owners have consented thereto. Each Banks Owner shall be responsible for the cost of any activity or event it chooses to conduct in any Public Plaza Area and for any loss or liability arising from such activity or event.

(c) Kiosks and Carts. The Banks Owner of any Banks Parcel used for retail purposes shall have the right to permit the use of outdoor portions of such Banks Parcel that are not a

part of the Outdoor Dining Areas for the erection, installation or placement of a reasonable number of kiosks and carts for the sale of goods and services; provided that: (i) such kiosks and carts do not impede reasonable pedestrian access, ingress and egress or vehicular access, ingress and egress on streets and drives serving the Banks Project or into or out of parking lots or structures which are part of or serve the Banks Project; (ii) the appearance of such kiosks and carts and the goods or services sold or offered for sale therefrom are First Class; and (iii) while any kiosk or cart is not in operation or is closed for business, it shall be secured in accordance with Legal Requirements. No kiosk or cart shall be operated or open for business on any Banks Parcel at any time before 7:00 a.m. or after 2:00 a.m. In addition, each Banks Owner shall have the right to erect or install a First Class kiosk or cart in outdoor portions of its Banks Parcel, in accordance with the foregoing provisions of this Section 2(c), to provide information solely concerning services it offers on its Banks Parcel.

(d) **Outdoor Displays.** Any restaurant operator within the Banks Project may place sandwich boards and vitrines for menus immediately outside each entrance to its restaurant, and any retail operator within the Banks Project shall be entitled to display merchandise in outdoor areas immediately adjacent to its retail establishment, provided that: (i) all of the foregoing is done in a First-Class manner; (ii) none of the foregoing impedes or materially interferes with pedestrian access, ingress or egress; and (iii) all merchandise and display equipment other than seasonal plants and flowers and display equipment therefor is brought indoors at the close of business of the establishment each day.

(e) **Outdoor Storage.** Except as otherwise provided below in this Section 2(e), no goods, equipment or other materials may be stored on any portion of a Banks Parcel outside of a building in such a manner as to be visible from any street or any other Banks Parcel. The above provisions of this Section 2(e) shall not apply to the temporary storage of construction materials used in the construction, reconstruction or alteration of any improvements.

3. **Temporary Structures.** No structure or object of a temporary character such as, but not limited to, house trailers, vans; tents, shacks or sheds shall be constructed, erected, kept or maintained on any Banks Parcel. This restriction shall not apply to (a) temporary structures such as tents, canopies or awnings erected for special events provided such temporary structures are promptly removed following such event, and (b) temporary construction trailers, cranes and similar structures used in the course of construction, reconstruction, alteration or removal of improvements.

EXHIBIT "J"

FORM OF ACCEPTANCE AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of _____, 200__ between **Riverbanks Renaissance Phase I-A Owner, LLC**, a Delaware limited liability company ("Landlord") and **Capri Concepts Cincinnati, LLC**, a _____ limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a Retail Lease Agreement, dated _____, 200__ (the "Lease") for certain premises known as Retail Suite(s) _____ in the building located at _____ (the "Premises");

WHEREAS, Landlord and Tenant desire to execute this Agreement pursuant to the Lease; and

WHEREAS, all capitalized terms used in this Agreement which are not defined herein shall have the meanings for such terms set forth in the Lease.

NOW THEREFORE, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Landlord and Tenant agree as follows:

1. The Rent Commencement Date of the Lease is _____.
2. The Expiration Date of the Initial Term is _____.
3. The Premises Rentable Area is _____ square feet.
4. Tenant is in possession of, and has accepted, the Premises and agrees that all the work (if any) to be performed by Landlord in the Premises as required by the terms of the Lease has been satisfactorily completed.
5. Tenant certifies that all conditions of the Lease required of Landlord as of this date have been fulfilled and there are no defenses or setoffs against the enforcement of the Lease by Landlord.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement under seal as of the date set forth above.

TENANT:

CRGE CINCINNATI, LLC, an Arizona limited liability company

By: _____

Name: _____

Title: _____

(SEAL)

LANDLORD:

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company

By: Riverbanks Renaissance Phase I-A Mezzanine, LLC, a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Joint Venture, LLC, a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Equity, LLC, a Delaware limited liability company, its managing member

By: _____

Name: _____

Title: Authorized Representative

(SEAL)

EXHIBIT "K"

OUTDOOR DINING AREA

As mutually agreed upon subject to the relevant provisions of the Declaration and approved by the City of Cincinnati, Ohio.

EXHIBIT "L"

General Declaration of Covenants, Conditions and Restrictions

B. The County and the City anticipate replating Lot 1, Lot 2, Lot 3, Lot 6, Lot 10 and the Lot 11 Remainder, including portions of Theodore M. Berry Way, into Lot 1A, Lot 1B ("Lot 1B"), Lot 2A, Lot 2B ("Lot 2B"), Lot 22 ("Lot 22"), Lot 23A, Lot 23B ("Lot 23B"), Lot 24A, Lot 24B ("Lot 24B"), Lot 25A, Lot 25B ("Lot 25B"), Lot 27 ("Lot 27") and Lot 28 ("Lot 28"), as depicted generally in Exhibit A hereto.

C. The County and the City have designated Riverbanks Renaissance, LLC, a Delaware limited liability company ("Developer"), to develop or cause to be developed a mixed use project (the "Banks Project") on and within Lot 1B, Lot 2B, Lot 13, Lot 16A, Lot 17, Lot 19, Lot 24B, Lot 24C, Lot 26B and Lot 27 (collectively, the "Banks Project Lots"). In connection with the development of the Banks Project by or through Developer, the City intends to develop a park (the "Central Riverfront Park") on and within Lot 20D, Lot 20E, Lot 21, Lot 22, Lot 23B and Lot 28 (collectively, the "Park Lots"), including a restaurant to be developed on and within Lot 20E.

D. The County and the City desire to enter into this Declaration in order to establish certain covenants, conditions and restrictions regarding the Banks Project and the Central Riverfront Park.

Statement of Declaration

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City hereby declare that the Banks Project Lots, the Park Lots and Lot 18 are and shall be subject to the covenants, conditions, restrictions and other provisions set forth below.

ARTICLE I DEFINITIONS

1.3 Definitions. As used in this Declaration, the following terms have the meanings given below:

"Assessment" has the meaning given in Section 5.1.

"Banks Owner" means the owner of the fee simple interest in any Banks Parcel. Notwithstanding the foregoing:

- (a) any Mortgagee shall not be deemed a Banks Owner with respect to the property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the Mortgagee from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

GENERAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS GENERAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into as of the 2nd day of September, 2009, by THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), and THE CITY OF CINCINNATI, OHIO, an Ohio municipal corporation (the "City").

Residues

A. The County and the City collectively own the fee simple interest in the following real property situated in the City of Cincinnati, Hamilton County, Ohio:

Lot 1 ("Lot 1"), Lot 2 ("Lot 2"), Lot 3 ("Lot 3"), Lot 6 ("Lot 6"), Lot 10 ("Lot 10"), Lot 13 ("Lot 13") of The Banks Phase II, as numbered and delineated on the recorded plat thereof, of record in Plat Book 387, Pages 43-45, Recorder's Office, Hamilton County, Ohio;

Lot 16A, Lot 16B ("Lot 16B"), Lot 17 ("Lot 17"), Lot 18 ("Lot 18"), Lot 19 ("Lot 19"), Lot 21 ("Lot 21"), Lot 26A and Lot 26B ("Lot 26B") of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio;

Lot 20C ("Lot 20C"), Lot 20D ("Lot 20D") and Lot 20E ("Lot 20E") of The Banks Phase V, as numbered and delineated on the recorded plat thereof, of record in Plat Book 420, Pages 75-76, Recorder's Office, Hamilton County, Ohio; and

That portion of Lot 11 of The Banks Phase II, as numbered and delineated on the recorded plat thereof, of record in Plat Book 387, Pages 43-45, Recorder's Office, Hamilton County, Ohio, that is not included in Lot 20C, Lot 20D, Lot 20E or Lot 21 (the "Lot 11 Remainder").

(b) a tenant or lessee of space in a Banks Parcel shall not be deemed an Owner.

(c) as to any Banks Parcel owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Banks Owner of such Banks Parcel;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed a Banks Owner of such real property solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event a Banks Owner of any Banks Parcel consists of more than one Person (other than a Banks Parcel owned under the condominium or cooperative form of ownership), such Persons shall, within thirty (30) days after the date of their acquisition of such Banks Parcel, execute and deliver to the County, the City and Developer a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Banks Owner as their designated agent to receive all notices and demands to be given to a Banks Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by a Banks Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Owner of such Banks Parcel for the purposes of exercising any rights of a Banks Owner under this Declaration. Such owning Persons may change their designated agent by written notice to the County, the City and Developer, but such change shall be effective only after actual receipt by the County, the City and Developer of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons or entities comprising the Banks Owner of such Banks Parcel appointing and authorizing one of such Persons comprising such Banks Owner to act as attorney-in-fact pursuant to such power of attorney.

"Banks Parcel" means any parcel created by a subdivision or split of any Banks Project Lot or any Banks Project Lot which has not been subdivided or split; provided that any Banks Parcel owned under the condominium or cooperative form of ownership shall constitute one Banks Parcel, and in no event shall an individual condominium unit or cooperative ownership interest constitute a Banks Parcel.

"Banks Project" has the meaning given in recital paragraph C.

"Banks Project Lot" has the meaning given in recital paragraph C.

"Central Riverfront Park" has the meaning given in recital paragraph C.

"City" has the meaning given in the introductory paragraph of this Declaration.

"County" has the meaning given in the introductory paragraph of this Declaration.

"Developer" has the meaning given in recital paragraph C.

"First Class" means the level of quality, condition, nature or operation that is comparable to the quality, condition, nature or operation found in other mixed-use developments in the Cincinnati metropolitan area of comparable age and quality to the Banks Project.

"Foreclosure" means, without limitation: (a) the judicial foreclosure of a Mortgage; (b) the exercise of a power of sale contained in any Mortgage; (c) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; or (d) any action commenced or taken by a lender to regain possession or control of property leased under a salesleaseback.

"Freedom Center" means National Underground Railroad Freedom Center, Inc., an Ohio non-profit corporation.

"Legal Requirements" means all applicable laws, statutes, ordinances, rules, regulations and requirements of governmental authorities, including, but not limited to, zoning and land use laws and building codes.

"Mortgage" means any encumbrance of a Banks Parcel as security for any indebtedness or other obligation of the Banks Owner of such Banks Parcel or its successors and assigns, whether by mortgage, deed of trust, salesleaseback, pledge, financing statement, security agreement, or other security instrument. However, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purposes of this Declaration, other than for purposes of Section 3.5.

"Mortgages" means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or the heirs, legal representatives, successors, transferees and assigns of such initial holder.

"Park Board" means the City of Cincinnati Board of Park Commissioners.

"Park Lot" has the meaning given in recital paragraph C.

"Person" means an individual, partnership, joint venture, co-tenancy, association, corporation, limited liability company, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

"Square Feet", "Square Footages" and similar terms mean: (a) with respect to office space, square feet of rentable area according to the Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-2006; (b) with respect to retail space, square feet

of interior floor area designed for tenant occupancy and exclusive use, including "selling" basement space (but excluding "non-selling" basement space), "selling" mezzanine space (but excluding "non-selling" mezzanine space), and "selling" upper floor space (but excluding "non-selling" upper floor space), and excluding outdoor patio/side-walk space ("selling" space referring to space used for the sale of goods or merchandise directly to customers, for the rendering of services directly to customers, and for any other intended use directly by customers; and "non-selling" space referring to space not intended for such uses, such as storage space); (c) with respect to residential apartment units, square feet of floor area designed for tenant occupancy and exclusive use, excluding basements and balconies; (d) with respect to residential condominium units, square feet of floor area within residential condominium units, including balconies which are limited common areas; and (e) with respect to hotel space, square feet of interior floor area.

ARTICLE 2 GENERAL USE AND OPERATING COVENANTS AND RESTRICTIONS REGARDING BANKS PROJECT LOTS

2.1 **Construction Process.** Upon the commencement of construction of improvements to any Banks Parcel, the Banks Owner constructing the improvements shall pursue such construction diligently and continuously to completion. A Banks Owner constructing improvements to any Banks Parcel shall take reasonable measures consistent with good construction practices to control the effects of the construction on the use and enjoyment of the other Banks Parcels, streets and street rights-of-way and the completed portions of the Central Riverfront Park, including but not limited to taking reasonable measures consistent with good construction practices to minimize construction noise, dust and vibration and to keep the other Banks Parcels, streets and street rights-of-way and the completed portions of the Central Riverfront Park reasonably clear of mud and construction debris.

2.2 **Prohibited Uses.** The following uses are prohibited on any Banks Parcel:

(a) **Fire Hazard.** Any use which produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazards, including the storage, display or sale of explosives or fireworks other than professional fireworks shows for special events, provided that ordinary use of heating implements in accordance with Legal Requirements (including ordinary use of grills and ovens and similar cooking appliances or structures in accordance with Legal Requirements in restaurants, grocery stores or other retail facilities), shall not violate this provision.

(b) **Gun-Related Uses.** Any shooting gallery, gun range, or gun shop; provided that a gun department that is part of but not the primary use of a sporting goods store, outdoor recreation store, department store, or other retail operation is permitted.

(c) **Amusement Gallery.** Any amusement gallery, video game arcade, or "virtual reality" establishment (an "Amusement Use"), except that the following Amusement Uses shall be permitted:

(i) any Amusement Use which is an ancillary use within a restaurant, movie theatre or other retail operation;

(ii) any Amusement Use which is marketed for use by persons eighteen years of age and older and is used primarily by persons eighteen years of age and older; and

(iii) any Amusement Use which is marketed for use by persons younger than eighteen years of age, provided that there is sufficient adult personnel in attendance at the establishment at all times when the establishment is open for business in order to maintain order and proper decorum.

(d) **Nuisance/Flashing Lights.** Any use that: (i) constitutes a public or private nuisance; or (ii) emits or generates an obnoxious odor, noise, fumes, dust or dirt, or flashing or "strobe" lights (except for signs complying with Legal Requirements), insofar as any of the foregoing items can be heard, smelled or seen outside of any building. For the purposes of this provision (i) ordinary odors of food and beverage preparation emanating from restaurants and other retail establishments shall not be considered obnoxious; (ii) grease trap doors, dumpster odors and the like that are perceptible from inside a building shall be considered obnoxious; and (iii) music that cannot be heard inside a building on a floor above storefront level shall not be considered obnoxious.

(e) **"Fire Sales".** Any "fire sale," "going out of business" sale or bankruptcy sale (except as may be required by court order) or auction sale except for auctions of fine art, fine jewelry, fine books, fine furnishings, and the like.

(f) **Funeral Parlors.** Any funeral parlor, mortuary or funeral home.

(g) **Massage Parlors.** Any massage parlor; provided that massage facilities in First Class health clubs, First Class spas and the like are permitted.

(h) **Adult Entertainment.** Any establishment featuring striptease, nude, "topless," or similar adult entertainment; provided that the foregoing restriction shall not prohibit the showing, sale or rental of movies or similar media that are being shown, offered for sale, or rented nationally to general audiences or in nationally recognized stores or live theatrical performance that contain incidental nudity or similar adult entertainment; provided further, that nothing in this Section 2.2(h) shall apply to entertainment within private residences.

(i) Paraphernalia Materials. Any establishment that devotes more than a minor or incidental portion of its floor area to sexually explicit or pornographic materials or receives more than a minor or incidental portion of its gross revenues from the sale of such materials.

(i) Paraphernalia for Illegal Drug Use. Any establishment that sells paraphernalia for illegal drug use.

(i) Cannabis and Bongs. Any nightclub, discotheque, dance hall or barroom whose sales of food do not constitute at least 30% of its gross sales; provided that any barroom within a hotel, any barroom devoted primarily to sales of wine, and any brewpub is allowed.

(i) Industrial Uses. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, refining, smelting, industrial, drilling or mining operation and any distilling operation except for a distilling operation incidental to a restaurant or a brewpub.

(i) Agricultural Uses. Any agricultural use; provided that a greenhouse operation or the sale of food or agricultural products grown elsewhere shall be permitted.

(i) Flea Markets. A flea market, pawn shop or thrift store.

(i) Stockyards. Any stockyard, slaughterhouse or livestock sales pavilion; provided that pet shops with or without ancillary kennel and veterinary facilities and operations are permitted.

(i) Junkyard. Any junkyard or any dumping, disposal, incineration or reduction of garbage, sewerage, dead animals or refuse except for disposal, incineration or reduction of garbage, sewerage or refuse generated on a Banks Parcel to the extent permitted by Legal Requirements.

(i) Dry Cleaning Plants and Laundries. Any commercial laundry, dry cleaning plant, or laundromat; provided that the prohibition against a commercial laundry or laundromat shall not be applicable to (i) facilities for on-site drop-off and pickup service for dry-cleaning performed off-site, (ii) laundry facilities provided in a residential building for the residents of such building, or (iii) laundry facilities within a hotel or temporary lodging facility.

(i) Quarrelling. Except to the extent customary in a First Class mixed use retail/residential/office real estate project, any gambling facility or operation, including but not limited to off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video poker/black-jack machines or similar devices or a bingo hall; provided that this prohibition shall not apply to the sale of governmental sponsored lottery tickets which are incidental to any

business operation or bingo or other operations carried on by a religious or charitable organization.

2.3 First Class Improvements. All improvements to any Banks Parcel must be First Class.

2.4 Outdoor Activities. Certain outdoor activities on the Banks Project Lots shall be restricted as follows:

(a) Outdoor Dining Areas

(i) General Restrictions. Any restaurant operator that owns or leases space within any building on a Banks Parcel may use portions of the outdoor space owned or adjacent to its leased space specifically designed therefor (any such outdoor space being called an "Outdoor Dining Area") for outdoor dining. Outdoor dining shall be permitted to be conducted in any Outdoor Dining Area only during the hours of 7:00 a.m. until 2:00 a.m. every day. Within any Outdoor Dining Area, the restaurant operator may place tables, chairs, hostess stations, waitress stations, heating implements, ice machines and bars, so long as each of the foregoing is easily portable, and such restaurant operator may provide outside connections to sanitary sewer and water lines in any Outdoor Dining Area. Any restaurant operator that uses an Outdoor Dining Area shall clean its Outdoor Dining Area and maintain it at all times in an orderly, sanitary and First Class condition, and all outdoor furniture used in any Outdoor Dining Area must be First Class.

(ii) Sound and Light Restrictions. Each Outdoor Dining Area located on Lot 16B, Lot 17, Lot 19 and Lot 26B shall be subject to the following additional restrictions. Subject to the exceptions set forth below, from and after the date that the City issues a permanent certificate of occupancy for the first residential unit within Lot 16B (each such residential unit within Lot 16B herein an "Affected Residential Unit"), (A) the applicable restaurant operator shall not allow amplified sound within its respective Outdoor Dining Area beyond 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday or beyond 11:00 p.m. on any Friday or Saturday; and (B) other than in the event of an emergency, no artificial lights (whether permanent or temporary) located in or serving an Outdoor Dining Area shall be pointed at the building facade of any Affected Residential Unit, and the applicable restaurant operator shall ensure that all artificial lights (whether permanent or temporary) located in or serving its respective Outdoor Dining Area shall either be pointed away from the building facade of any Affected Residential Unit or otherwise shielded from the building facade of any Affected Residential Unit so as to avoid casting light through the windows located on such facades at night. The sound restriction set forth in clause (A) above shall be subject to the following exceptions:

(i) On no more than 35 evenings per calendar year, the hours during which each applicable restaurant operator may allow amplified sound within its respective Outdoor Dining Area may be extended to 12:00 midnight.

Banks Owners have consented thereto. Each Banks Owner shall be responsible for the cost of any activity or event it chooses to conduct in any Public Plaza Area and for any loss or liability arising from such activity or event.

(c) **Kiosks and Carts.** The Banks Owner of any Banks Parcel used for retail purposes shall have the right to permit the use of outdoor portions of such Banks Parcel that are not a part of the Outdoor Dining Areas for the erection, installation or placement of a reasonable number of kiosks and carts for the sale of goods and services provided that: (i) such kiosks and carts do not impede reasonable pedestrian access, ingress and egress or vehicular access, ingress and egress on streets and drives serving the Banks Project or into or out of parking lots or structures which are part of or serve the Banks Project; (ii) the appearance of such kiosks and carts and the goods or services sold or offered for sale therefrom are First Class; and (iii) while any kiosk or cart is not in operation or is closed for business, it shall be secured in accordance with Legal Requirements. No kiosk or cart shall be operated or open for business on any Banks Parcel at any time before 7:00 a.m. or after 2:00 a.m. In addition, each Banks Owner shall have the right to erect or install a First Class kiosk or cart in outdoor portions of its Banks Parcel, in accordance with the foregoing provisions of this Section 2.4(c), to provide information solely concerning services it offers on its Banks Parcel.

(d) **Outdoor Displays.** Any restaurant operator within the Banks Project may place sandwich boards and winches for menus immediately outside each entrance to its restaurant, and any retail operator within the Banks Project shall be entitled to display merchandise in outdoor areas immediately adjacent to its retail establishment, provided that: (i) all of the foregoing is done in a First-Class manner; (ii) none of the foregoing impedes or materially interferes with pedestrian access, ingress or egress; and (iii) all merchandise and display equipment other than seasonal plants and flowers and display equipment therefor is brought indoors at the close of business of the establishment each day.

(e) **Outdoor Storage.** Except as otherwise provided below in this Section 2.4(e), no goods, equipment or other materials may be stored on any portion of a Banks Parcel outside of a building in such a manner as to be visible from any street or any other Banks Parcel. The above provisions of this Section 2.4(e) shall not apply to the temporary storage of construction materials used in the construction, reconstruction or alteration of any improvements.

2.5 **Temporary Structures.** No structure or object of a temporary character such as, but not limited to, house trailers, vans, tents, sheds or sheds shall be constructed, erected, kept or maintained on any Banks Parcel. This restriction shall not apply to (a) temporary structures such as tents, canopies or awnings erected for special events provided such temporary structures are promptly removed following such event, and (b) temporary construction trailers, cranes and similar structures used in the course of construction, reconstruction, alteration or removal of improvements.

(1) During Major Public Festivals (defined herein as large public events such as, but not limited to, Riverfest, Taste of Cincinnati, Oktoberfest and the Jazz Festival), the hours during which each applicable restaurant operator may allow amplified sound within its respective Outside Dining Area may be extended to 12:00 midnight. Extensions of hours for amplified sound for Major Public Festivals occurring on Thursdays, Fridays, Saturdays or Sundays shall not count against the 35 evenings per calendar year provided for in subsection (1) above. Extensions of hours for amplified sound for Major Public Festivals occurring on Mondays, Tuesdays or Wednesdays shall count against the 35 evenings per calendar year provided for in subsection (1) above.

The restrictions set forth in this Section 2.4(a)(1) (the "2.4(a)(1) Restrictions") shall be for the sole benefit of the Affected Residential Units and shall be enforceable only by (x) the owner from time to time of the fee simple interest in any residential unit within Lot 16B that is not a condominium unit or cooperative unit (for example, an apartment building), and, if so designated by such owner, the owner's property management company for such residential unit, and (y) the condominium owners' association or cooperative owners' association for any residential condominium unit or residential cooperative unit within Lot 16B (collectively, the "2.4(a)(1) Benefited Parties"). There shall be no other third party beneficiaries of the 2.4(a)(1) Restrictions. By way of example and not limitation, the 2.4(a)(1) Restrictions shall not be enforceable by the individual tenants of any residential apartment building within Lot 16B, or by the individual owners or occupants of any residential condominium units or residential cooperative units within Lot 16B, or by the condominium owners' association for any commercial condominium building within Lot 16B or the individual owners or occupants of the commercial condominium units therein, by the City or the County, or by any owner, operator, occupant or tenant of all or any portion of any Banks Project Lot other than Lot 16B. The 2.4(a)(1) Benefited Parties may enforce the 2.4(a)(1) Restrictions in any manner provided by law or in equity.

(b) **Special Events.** Any Banks Owner may use portions of the Banks Project Lots designed for outdoor events (collectively, the "Public Plaza Areas") for First Class special activities and events, so long as such activities and events: (i) are conducted in a safe and orderly manner and in compliance with Legal Requirements and all other provisions of this Declaration; (ii) are in keeping with the quality and perception of the Banks Project as a First Class urban mixed-use project; and (iii) will not create such amounts of noise, congestion, odors or light as to disrupt or interfere with the normal and customary use and enjoyment by other Banks Owners of their Banks Parcels, or with the normal and customary use and enjoyment by tenants of their respective leased premises located within the Banks Project. Examples of activities or events that may be conducted in the Public Plaza Areas for illustrative purposes only and provided that such activities or events comply with the foregoing provisions of this Section 2.4(b) are art shows, antique festivals and certain types of live performances. No activities or events shall be conducted in the Public Plaza Areas at any time before 9:00 a.m. or after 2:00 a.m., unless all

2.6 Compliance with Legal Requirements. Each Banks Owner shall comply with all Legal Requirements applicable to the use and operation of its Banks Parcel. This Declaration shall not be construed as altering any Legal Requirements applicable to a Banks Parcel or a Banks Owner, and if any Legal Requirement is more restrictive or less permissive than the provisions of this Declaration, the Legal Requirement shall apply notwithstanding this Declaration.

ARTICLE 3 SPECIFIC COVENANTS AND RESTRICTIONS REGARDING LOT 17, LOT 18 AND LOT 19

3.1 Lot 18. Lot 18 shall be used only as a public park and for related purposes. No improvements shall be constructed on Lot 18 other than those which are part of a public park or public infrastructure improvements, and improvements incidental thereto, and any such improvements shall be subject to prior written design approval by the Freedom Center, which approval shall not be unreasonably withheld, it being understood that the Freedom Center's scope of review shall be limited to the effect of such improvements on sight lines southerly from the Freedom Center's museum. Until such time, if any, that Lot 18 is conveyed to the City or otherwise incorporated as part of the Central Riverfront Park, the Banks Owners of Lot 17 and Lot 19 shall jointly and severally maintain and keep the public park on Lot 18, once constructed, in good condition and repair. From and after such time, if any, that Lot 18 is conveyed to the City or otherwise incorporated as part of the Central Riverfront Park, the City (through the Park Board) shall maintain and keep the public park on Lot 18, once constructed, in good condition and repair. For so long as the Freedom Center operates a museum on the north side of Freedom Way across from Lot 18, the Freedom Center may, subject to scheduling with the owner of Lot 18, use Lot 18 for purposes not inconsistent with park purposes in connection with not more than six special events of the Freedom Center each calendar year, each such special event to have a duration of no longer than one day; provided that: (a) the Freedom Center shall be responsible for maintenance, repair, and restoration of the public park on Lot 18 necessitated by such special events; and (b) from and after such time, if any, that Lot 18 is conveyed to the City or otherwise incorporated as part of the Central Riverfront Park, the Freedom Center's use of Lot 18 for special events shall be subject to such reasonable rules and regulations as the Park Board may establish from time to time.

3.2 Lot 17 and Lot 19. Lot 17 and Lot 19 shall be subject to building height restrictions of 35 feet above the street elevation. No improvements shall be constructed on Lot 17 or Lot 19 which exceed a height of 35 feet above the street elevation, and no such improvements shall have exposed mechanical equipment, exhaust or waste pipes or vents on the roof which are visible from adjacent streets. In addition, any improvements to be constructed on Lot 17 or Lot 19 shall be subject to prior written design approval by the Freedom Center, which approval shall not be unreasonably withheld, it being understood that the Freedom Center's scope of review shall be limited to (a) the effect of the improvements to be constructed on Lot 17

and Lot 19 on sight lines southerly from the Freedom Center's museum, and (b) design issues concerning trash pickup, deliveries, and exhaust fans for such improvements.

ARTICLE 4 SPECIFIC COVENANTS AND RESTRICTIONS REGARDING PARK LOTS

4.1 Park Lot Covenants and Restrictions. The Park Lots shall be used only as a public park and for related purposes. Use of the Park Lots for weddings and other private events pursuant to rules and regulations established by the Park Board shall be considered to be consistent with use as a public park. No improvements shall be constructed on the Park Lots other than those which are part of a public park or public infrastructure improvements, and improvements incidental thereto; provided that the City may construct or permit the construction of a restaurant building on Lot 206 and up to two additional restaurant buildings on other Park Lots, none of which shall exceed a height of 35 feet above the elevation of the highest sidewalk (as identified by the owner of such Park Lot) abutting the Park Lot in question, and provided that the County may elect to subdivide Lot 28 into a ground lot and an air space lot, and to construct and operate parking facilities within such ground lot. The City (through the Park Board) shall maintain and keep the Central Riverfront Park, including all improvements to the Park Lots, in good condition and repair. The use of Park Lots shall comply with all applicable Legal Requirements. This Declaration shall not be construed as altering any Legal Requirements applicable to a Park Lot, and if any Legal Requirement is more restrictive or less permissive than the provisions of this Declaration, the Legal Requirement shall apply notwithstanding this Declaration.

4.2 Construction Process. Upon the commencement of construction of any portion of the Central Riverfront Park or any improvements thereon, the City shall pursue such construction diligently and continuously to completion; provided that, for purposes of this Section 4.2, the City shall be deemed to have completed the construction of any portion of the Central Riverfront Park when such portion of the Central Riverfront Park is landscaped to a finished appearance, regardless of whether some or all of the design elements intended by the City or the Park Board to be eventually constructed are actually constructed. The City shall take reasonable measures consistent with good construction practices to control the effects of the construction of the Central Riverfront Park or any improvements thereon on the use and enjoyment of the completed portions of the Banks Project, including but not limited to taking reasonable measures consistent with good construction practices to minimize construction noise, dust and vibration and to keep the completed portions of the Banks Project reasonably clear of mud and construction debris.

ARTICLE 5 ASSESSMENTS FOR PARK MAINTENANCE

5.1 Assessments. Each Banks Parcel shall be subject to an annual assessment (the "Assessment") determined on a calendar year basis, in the amount and otherwise as provided in this Article 5, to be paid to the City and used for maintaining and operating the Central

Riverfront Park. The Assessment shall commence generally as of the first date on which improvements to any Banks Parcel, or any portion thereof, are substantially complete (such date being called the "Assessment Commencement Date"), and shall commence as to each Banks Parcel, or any portion thereof, as of the first date on which improvements to such Banks Parcel, or any portion thereof, are substantially complete; provided that the Assessment shall not commence prior to the substantial completion of the Central Riverfront Park on Lot 20D, Lot 20E and Lot 21 landscaped to a finished appearance, regardless of whether some or all of the design elements intended by the Park Board to be eventually constructed are actually constructed. At the request of the City or any Banks Owner, the City and Banks Owners shall confirm the Assessment Commencement Date in writing. This Assessment shall be prorated for the calendar year in which the subject improvements are completed. If the improvements to a Banks Parcel consist of more than one building, the Assessment for any one building shall commence upon the substantial completion of such building, irrespective of the fact that the other improvements to the Banks Parcel are not complete. The amount of the Assessment for each calendar year shall be in the amount of \$0.35 per Square Foot of commercial (non-residential) improvements (including without limitation retail, office and hotel) to the Banks Parcel and \$0.08 per Square Foot of residential improvements to the Banks Parcel, or portion thereof, subject to adjustment as of the January 1 first occurring at least five years after the Assessment Commencement Date and as of each fifth January 1 thereafter (each such January 1 being called an "Assessment Adjustment Date"). As of the first Assessment Adjustment Date, the Assessment shall be increased by the same percentage by which the Price Index (as defined below) has increased from the Assessment Commencement Date to such Assessment Adjustment Date. As of each subsequent Assessment Adjustment Date, the Assessment (as previously established as of the immediately preceding Assessment Adjustment Date) shall be increased by the same percentage by which the Price Index has increased from the immediately preceding Assessment Adjustment Date to the Assessment Adjustment Date as of which the adjustment is being made. In no event shall the Assessment be reduced as of any Assessment Adjustment Date. For purposes of this Section 5.1, the term "Price Index" shall mean (i) the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (1982 - 84 = 100) published by the Bureau of Labor Statistics, U.S. Department of Labor, or (ii) if publication of that index is discontinued, a similar substitute index to be selected or constructed by agreement of the parties.

5.2 Payment. From and after the commencement of the Assessment for each Banks Parcel, or specific portion thereof, the Banks Owner of such Banks Parcel shall pay the Assessment to the City, or as directed by the City, in equal quarterly payments due in arrears on March 31, June 30, September 30, and December 31 of each calendar year or on such other dates as the City may reasonably establish. The City may, at its option, give notice to a Banks Owner of the amount of the Assessment for any calendar year, calculated in accordance with Section 5.1 above. Failure of the City to give such notice shall not relieve the Banks Owner from its obligations to pay Assessments in accordance with this Article 5; provided that a Banks Owner shall be excused from the payment of the increased amount of any Assessment as of any Assessment Adjustment Date until the City gives such Banks Owner written notice of such increased amount. Each installment of an Assessment which is not paid when due shall bear

interest at the rate of Prime plus 4% per annum from the date which is ten days after the due date until paid. "Prime" shall mean the prime rate as published in the Wall Street Journal from time to time, or if the Wall Street Journal ceases publishing, in such reasonably alternative publication chosen by the City.

5.3 Liability for Unpaid Assessments. Each Assessment or installment thereof, together with interest thereon and any costs of collection, including reasonable attorneys' fees, shall become the personal obligation of the applicable Banks Owner beginning on the date the Assessment or installment thereof becomes due and payable. The transfer of an interest in a Banks Parcel, or any portion thereof, shall neither impair the City's lien against that Banks Parcel for any delinquent Assessment nor prohibit the City from foreclosing that lien.

5.4 Lien for Unpaid Assessments. All unpaid Assessments or installments thereof, together with any interest thereon and costs of collection, shall constitute a continuing charge in favor of the City and a lien on the Banks Parcel against which the Assessment was levied. If any Assessment or installment thereof remains unpaid for ten days after it is due, the City may file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and costs, in the Hamilton County, Ohio Recorder's Office containing a description of the Banks Parcel which the lien encumbers, the name of the Banks Owner of that Banks Parcel and the unpaid amount of the Assessment. Upon the filing of the certificate, the subject Banks Parcel shall be encumbered by a lien in favor of the City for the amount set forth therein which shall date in priority from the time of the filing thereof. Such lien shall remain valid for a period of five years from the date such certificate is duly filed, and may thereafter be renewed for like consecutive terms, unless the lien is released earlier or satisfied in the same manner provided for the release and satisfaction of mortgages on real property, or unless the lien is discharged by the final judgment or order of any court having jurisdiction.

5.5 Priority of Lien. The lien provided for in Section 5.4 shall take priority, established as of the date of filing of the certificate of lien provided for in Section 5.4, over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first priority Mortgages. The lien provided for in Section 5.4 may be foreclosed in the same manner as a mortgage on real property on action brought by the City.

5.6 Use of Assessments. The Assessments will be used by the City only to pay costs of maintaining and operating the Central Riverfront Park.

5.7 Estoppel Certificates. The City shall, from time to time, within twenty (20) days after written request by a Banks Owner, execute and deliver to the requesting Banks Owner and/or such third party designated by the requesting Banks Owner a statement in writing certifying as to the status of the Assessments under this Article 5 on the Banks Parcel(s) of the requesting Banks Owner.

5.8 **Deliveries and Audit Rights.** A Banks Owner, in connection with the payment of the first Assessment against a Banks Parcel or within 10 days after request therefor by the City, shall deliver to the City architectural drawings, certified by the Banks Owner to the City, showing the applicable Square Footage of the improvements to the Banks Parcel together with a detailed statement of the calculation of the Assessment. The City shall have the right, one time only (unless there has been a material change in the Square Footage of the applicable improvements, in which event the City shall have the right once again), to audit the books and records of the Banks Owner with respect to the Square Footage of the improvements or request that an architect of the City's choosing verify the Square Footage of the improvements. In the event the architect hired by the City determines that the Square Footage is greater than that reported by the Banks Owner, the Banks Owner shall promptly pay any underpayment of the Assessment to the City, together with the cost of any audit in the event the City's architect discloses a discrepancy of 5% or more in the Assessment.

ARTICLE 6 ENFORCEMENT

6.1 **Generally.** Except as otherwise expressly provided in Section 2.4(a)(ii), each Banks Owner shall have the right to enforce the provisions of Article 2 and Article 4 of this Declaration in any manner provided by law or equity. The City, the County, the Freedom Center, and each Banks Owner of Lot 17 and Lot 19, but not Banks Owners generally, shall have the right to enforce the provisions of Article 3 of this Declaration in any manner provided by law or equity. The City shall have the right to enforce the provisions of Article 5 of this Declaration in any manner provided by law or equity. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. Default under any of the provisions of this Declaration shall give each non-defaulting party with a right to enforce such provisions as provided above a right of action in any court of competent jurisdiction to compel compliance and/or to prevent the default, and the expense of such litigation shall be borne by the defaulting party, provided such proceeding confirms the alleged default. Expenses of litigation shall include reasonable attorneys' fees and expenses incurred by each non-defaulting party in enforcing this Declaration.

ARTICLE 7 GENERAL PROVISIONS

7.1 **Notices.** Any notice to be given under this Declaration shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement,

satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery:

If to the County:

Hamilton County Administrator
138 East Court Street, Room 603
Cincinnati, OH 45202
Telecopy: (513) 946-4444
Telephone: (513) 946-4400

with a copy to:

Hamilton County Prosecutor's Office
230 E. Ninth Street, 8th Floor
Cincinnati, Ohio 45202
Attn: Roger E. Friedman, Esq.
Telecopy: 513-946-3018
Telephone: 513-946-3025

and

Vovys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, Ohio 45202
Attn: Thomas L. Gabelman, Esq.
Telecopy: 513-852-7843
Telephone: 513-723-8580

If to the City:

City of Cincinnati, Ohio
801 Plum Street, Room 152
Cincinnati, OH 45202
Attn: City Manager
Telecopy: 513-352-3241
Telephone: 513-352-6284

with a copy to:

City of Cincinnati, Ohio
801 Plum Street, Room 214
Cincinnati, OH 45202
Attn: City Solicitor
Telecopy: 513-352-3334
Telephone: 513-352-1515

If to Developer:

Riverbanks Renaissance, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363

Attn: A. Trent Germano, Vice Chairman
Telecopy: (404) 888-4311
Telephone: (404) 888-3156

and

Riverbanks Renaissance, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303

Attn: Jerome Hagley, Executive Vice President
Telecopy: (404) 347-3040
Telephone: (404) 486-3561

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest LaMont Green, Esq.
Telecopy: (678) 553-2212
Telephone: (678) 553-2420

and

Kilpatrick Stockton LLP
Suite 2300
1100 Peachtree Street
Atlanta, GA 30309-4130
Attn: M. Andrew Kauss, Esq.
Telecopy: (404) 541-3262
Telephone: (404) 815-6620

7.2 Binding Effect; Duration. This Declaration, including all benefits and benefits hereof, shall run with the land, and shall be enforceable as provided herein for a term of 30 years from the effective date of this Declaration; provided that the Assessments provided for in Article 5 shall be enforceable as provided herein for a term of 99 years from the effective date of this Declaration.

7.3 Amendments. This Declaration may be amended only by a writing signed by the City and each Banks Owner; provided that the provisions of Article 3 may be amended by a writing signed by the Freedom Center, the County, the City and the Banks Owner of Lot 17, Lot 18 and/or Lot 19, as applicable. Any such amendment to this Declaration shall become effective upon recordation in the Office of the Recorder of Hamilton County, Ohio.

7.4 Calculation of Time Periods. In computing any period of time set forth in this Declaration, the day of the act, event or notice after which the designated period of time begins to run is not included and the last day of the period so computed is included, unless such last day is not a business day, in which event the period of time shall run until the end of the next day which is a business day.

7.5 Severability. If any provision of this Declaration or its application to any party or circumstance shall to any extent be in violation of or unenforceable under any law, rule, regulation or order now existing or hereafter enacted or entered by any court or other governmental entity having jurisdiction, the remainder of this Declaration, or the application of such provision to parties or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

7.6 Choice of Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Ohio.

7.7 Jurisdiction and Venue. All actions or proceedings arising in connection with this Declaration shall be tried and litigated only in state or federal courts located in Hamilton County, Ohio having subject matter jurisdiction over the matter in controversy. This choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 7.7.

7.8 Usage. Whenever used, the singular shall include the plural and the plural shall include the singular, and the use of any gender shall include all genders.

7.9 Captions. The captions to the Articles and Sections of this Declaration are included only for convenient reference, and shall not affect the meaning or interpretation of this Declaration.

7.10 Waiver. No failure on the part of a party to exercise any right or remedy hereunder shall operate as a waiver, except as specifically provided.

7.11 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be a duplicate original, but all of which shall constitute the same Declaration.

7.12 Third Parties. Except as provided in Section 6.1, there shall be no third party beneficiaries of this Declaration.

7.13 Release from Liability. Each Banks Owner shall be bound by this Declaration only during the period that such Banks Owner is the owner of a Banks Parcel, shall be liable only for the obligations, liabilities or responsibilities under this Declaration that accrue during such period, and upon the conveyance or transfer (other than as security) of its interest in such Banks Parcel, shall be released from any and all liabilities and obligations under this Declaration with respect to such Banks Parcel accruing after the date the instrument of transfer is recorded in the Office of the Recorder of Hamilton County, Ohio.

The County and the City have executed this Declaration as of the date first set forth above.

Approved as to Form:


Assistant County Prosecutor

THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO


Patrick Thompson, County Administrator

Recommended for the City by:


Director, Park Board

THE CITY OF CINCINNATI, OHIO

By: 
Milton Doherty, Jr., City Manager

Approved as to Form:

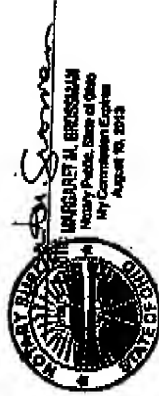

Assistant City Solicitor

CERTIFICATION OF
FUNDS NOT REQUIRED



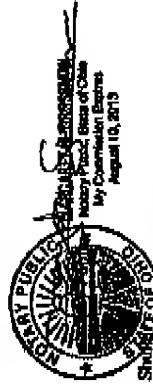
STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 24th day of September, 2009, by Patrick Thompson, County Administrator of Hamilton County, Ohio, on behalf of The Board of Commissioners of Hamilton County, Ohio.



STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 24th day of September, 2009, by Milton Doherty, Jr., City Manager of the City of Cincinnati, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.



This instrument was prepared by:

Donald J. Seymour and Pease LLP
Vorys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, OH 45202

EXHIBIT A - Site Plan



EXHIBIT "M"

**Declaration of Easements, Covenants, Conditions and Restrictions
(Lot 26B, The Banks, Phase IV)**

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Lot 26B, The Banks, Phase IV)

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into as of the ____ day of December, 2010, by RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-A Owner"), and RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-B Owner") (Phase I-A Owner and Phase I-B Owner being called, collectively, "Owners" and, individually, an "Owner").

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Lot 26B, The Banks, Phase IV)

BY

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,

AND

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC,

Recitals

A. Phase I-A Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described on Exhibit A attached hereto (the "Phase I-A Property").

B. Phase I-B Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described on Exhibit B attached hereto (the "Phase I-B Property").

C. The Phase I-A Property and the Phase I-B Property are depicted in Exhibit C attached hereto. The Phase I-A Property and the Phase I-B Property are collectively called the "Property".

D. Phase I-A Owner intends to construct improvements on the Phase I-A Property (the "Phase I-A Improvements") and Phase I-B Owner intends to construct improvements on the Phase I-B Property (the "Phase I-B Improvements"). The Phase I-A Improvements and the Phase I-B Improvements are collectively called the "Improvements".

E. Phase I-A Owner and Phase I-B Owner desire to enter into this Declaration in order to establish certain easements, covenants, conditions and restrictions regarding the Phase I-A Property and the Phase I-B Property, and to set forth certain other agreements among themselves regarding the Phase I-A Property and the Phase I-B Property that are intended to run with the land.

Statement of Declaration

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Phase I-A Owner and Phase I-B Owner hereby declare that the Phase I-A Property and the Phase I-B Property are and shall be subject to the easements, covenants, conditions, restrictions and other provisions set forth below.

**ARTICLE 1
DEFINITIONS**

1.1 Definitions. As used in this Declaration, the following terms have the meanings given below:

"Foreclosure" means, without limitation, (a) the judicial foreclosure of a Mortgage; (b) the exercise of a power of sale contained in any Mortgage; (c) conveyance of a property encumbered by a Mortgage in lieu of foreclosure thereof; or (d) any action commenced or taken by a lessor to regain possession or control of property leased under a sale/leaseback.

"Legal Requirements" means all applicable laws, statutes, ordinances, rules, regulations and requirements of governmental authorities, including, but not limited to, zoning and land use laws and building codes.

"Mortgage" means any encumbrance of any portion of the Property as security for any indebtedness or other obligation of a Property Owner or its successors and assigns, whether by mortgage, deed of trust, sales/leaseback, pledge, financing statement, security agreement, or other security instrument; provided, however, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purposes of this Declaration, other than for purposes of Section 5.4.

"Mortgagee" means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or its heirs, legal representatives, successors, transferees and assigns of such initial holder.

"Owner" and **"Owners"** have the meanings given in the introductory paragraph of this Declaration.

"Party" means each of the Phase 1A Owner and Phase 1B Owner. **"Parties"** means, collectively, the Phase 1A Owner and Phase 1B Owner.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, joint stock company, trust, unincorporated association, institution, entity or governmental authority.

"Property Owner" means, with respect to any portion of the Property, the owner of the fee simple interest in such portion of the Property. As of the date of this Declaration, Phase 1A Owner is the Property Owner with respect to the Phase 1A Property and Phase 1B Owner is the Property Owner with respect to the Phase 1B Property. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed a Property Owner with respect to the portion of the Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagee from possession by appropriate legal

proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

(b) a tenant or lessee of space in the Property shall not be deemed a Property Owner;

(c) if any portion of the Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Property Owner with respect to such portion of the Property;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Property shall not be deemed the Property Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event a Property Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such Persons shall, within 30 days after the date of their acquisition of any portion of the Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Property Owner as their designated agent to receive all notices and demands to be given to such Property Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by such Property Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Property Owner for the purposes of exercising any rights of such Property Owner under this Declaration. Such Persons comprising a Property Owner may change their designated agent by written notice to the Parties, but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising such Property Owner appointing and authorizing one of such Persons comprising such Property Owner to act as attorney-in-fact pursuant to such power of attorney.

"Property Personnel" means, with respect to any portion of the Property, the Property Owner, any manager engaged to manage such portion of the Property, any owner of an individual condominium unit or cooperative ownership interest in such portion of the Property, tenants and subtenants of such portion of the Property, and their respective employees, agents, contractors, guests and invitees.

**ARTICLE 2
EASEMENTS**

2.1 Easements in the Phase 1A Property for Benefit of the Phase 1B Property. There are hereby established and created, and Phase 1A Owner hereby grants to Phase 1B Owner, easements in the Phase 1A Property for the benefit of the Phase 1B Property, as set forth below in this Section 2.1 (collectively, the **"Phase 1A Easements"**), on and subject to the terms and conditions set forth herein.

2.1.1 Construction Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property as reasonably necessary to facilitate construction work on the Phase 1B Improvements. This easement shall be in effect for the benefit of Phase 1B Owner during the period of construction of any of the Phase 1B Improvements and during the period of any reconstruction of any of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.2 Maintenance, Repair and Alteration Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform maintenance and repair on the Phase 1B Improvements; and (b) facilitate alterations of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.3 Utility Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use those portions of the Phase 1A Property designed therefor (including portions of the property below the concrete podium slab) to install, use, maintain, repair and replace utility facilities (including, without limitation, cooling tower condenser water lines) serving the Phase 1B Property. The location of any utility lines or conduits on the Phase 1A Property by Phase 1B Owner shall be subject to the approval of Phase 1A Owner and shall not interfere with or obstruct the utility lines or conduits serving the Phase 1A Property.

2.1.4 Access Drives and Ramps. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use the access drives and ramps within the Phase 1A Property as shown on Exhibit D for vehicular access (but not parking) by Property Permittees of the Phase 1B Property in connection with use of parking spaces in the parking facility located below the Phase 1A Property and the Phase 1B Property.

2.1.5 Service Drives. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use the service drives within the Phase 1A Property as shown on Exhibit D for vehicular access (but not parking) by Property Permittees of the Phase 1B Property for access to and from the Phase 1B Property and Main Street.

2.1.6 Stairwells. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use the stairway within the Phase 1A Property as shown on Exhibit D for pedestrian access by Property Permittees of the Phase 1B Property for access to and from the Phase 1B Property.

2.1.7 Crane Swing Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, temporary easement for the booms and associated tackle of construction cranes located on and operating from the Phase 1B Property to enter and encroach into, onto, and/or through the air space located above the Phase 1A Property and any improvements located thereon. The travel paths of such construction crane arms shall be delivered to Phase 1A Owner prior to use thereof. The foregoing easement shall commence on the date the use of such easement is necessary for the performance of construction activities on the Phase 1B Property and shall automatically terminate without further action by Phase 1A Owner or Phase 1B Owner at such time as Phase 1B Owner completes the construction activities on the Phase 1B Property requiring the use of the applicable construction crane(s), but in any event, not later than the date a certificate of occupancy is issued for all improvements on the Phase 1B Property.

2.1.8 Easement for Encroachments. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, an exclusive, perpetual easement for the encroachment of the Phase 1B Improvements, as constructed, on the Phase 1A Property arising by reason of: (a) nonmaterial encroachments of the Phase 1B Improvements on the Phase 1A Property; or (b) shifting, settlement or movement of the Phase 1B Improvements after construction.

2.1.9 Easement to Enter to Cure Defaults. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property from time to time, upon reasonable prior notice except in the case of an emergency, for the purpose of performing any obligation of Phase 1A Owner with respect to the Phase 1A Property which Phase 1A Owner is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.10 Additional Easements. Phase 1B Owner may from time to time request additional easements in the Phase 1A Property for the benefit of the Phase 1B Property, to permit the Phase 1B Owner to install, use, maintain, repair and replace components and equipment serving the Phase 1B Property (other than utility facilities, which are the subject of Section 2.1.3). Phase 1A Owner shall consider such requests in good faith, and, provided that Phase 1A Owner determines, in Phase 1A Owner's reasonable discretion, that any such requested easement (a) would not materially increase the cost of constructing or operating the Phase 1A Improvements, and (b) would not otherwise materially adversely affect the use, operation or appearance of the Phase 1A Improvements, Phase 1A Owner shall grant such easement to Phase 1B Owner on and subject to such terms as Phase 1A Owner may reasonably require (other than any fee or other compensation).

2.2 Easements in the Phase 1B Property for Benefit of the Phase 1A Property. There are hereby established and created, and Phase 1B Owner hereby grants to Phase 1A Owner, easements in the Phase 1B Property for the benefit of the Phase 1A Property, as set forth below in this Section 2.2 (collectively, the "Phase 1B Easements"; the Phase 1A Easements and the Phase 1B Easements are collectively called the "Easements"), on and subject to the terms and conditions set forth herein.

2.2.1 Construction Easement. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase IA Property as reasonably necessary to facilitate construction work on the Phase IB Improvements. This easement shall be in effect for the benefit of Phase IB Owner during the period of construction of any of the Phase IB Improvements and during the period of any reconstruction of any of the Phase IB Improvements. Phase IB Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase IA Property, to the extent practical.

2.2.2 Maintenance, Repair and Alteration Easement. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase IA Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform maintenance and repair on the Phase IB Improvements; and (b) facilitate alterations of the Phase IB Improvements. Phase IB Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase IA Property, to the extent practical.

2.2.3 Utility Easement. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual easement to use those portions of the Phase IB Property designed therefor (including portions of the property below the concrete podium slab) to install, use, maintain, repair and replace utility facilities (including, without limitation, cooling tower condenser water lines) serving the Phase IA Property. The location of any utility lines or conduits on the Phase IB Property by Phase IA Owner shall be subject to the approval of Phase IB Owner and shall not interfere with or obstruct the utility lines or conduits serving the Phase IB Property.

2.2.4 Access Drives and Ramps. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual easement to use the access drives and ramps within the Phase IB Property as shown on Exhibit E for vehicular access (but not parking) by Property Permittees of the Phase IA Property in connection with use of parking spaces in the parking facility located within the Phase IA Property.

2.2.5 Service Drives. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual easement to use the service drives within the Phase IB Property as shown on Exhibit E for vehicular access (but not parking) by Property Permittees of the Phase IA Property for access to and from the Phase IA Property and Walnut Street.

2.2.6 Crane Slinging Easement. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, temporary easement for the booms and associated tackle of construction cranes located on and operating from the Phase IA Property to enter and overreach into, onto, and/or through the air space located above the Phase IB Property and any improvements located thereon. The travel paths of such construction crane arms shall be

EXHIBIT 10A-11

delivered to Phase IB Owner prior to use thereof. The foregoing easement shall commence on the date the use of such easement is necessary for the performance of construction activities on the Phase IA Property and shall automatically terminate without further action by Phase IA Owner or Phase IB Owner at such time as Phase IA Owner completes the construction activities on the Phase IA Property requiring the use of the applicable construction easement(s), but in any event, not later than the date a certificate of occupancy is issued for all improvements on the Phase IA Property.

2.2.7 Easement for Encroachments. There is established and created, and Phase IB Owner grants to Phase IA Owner, an exclusive, perpetual easement for the encroachment of the Phase IA Improvements, as constructed, on the Phase IB Property arising by reason of: (a) nonmaterial encroachments of the Phase IA Improvements on the Phase IB Property; or (b) shifting, settlement or movement of the Phase IA Improvements after construction.

2.2.8 Easement to Enter to Cure Defaults. There is established and created, and Phase IB Owner grants to Phase IA Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase IB Property from time to time, upon reasonable prior notice except in the case of an emergency, for the purpose of performing any obligation of Phase IB Owner with respect to the Phase IB Property which Phase IB Owner is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). Phase IA Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase IB Property, to the extent practical.

2.2.9 Additional Easements. Phase IA Owner may from time to time request additional easements in the Phase IB Property for the benefit of the Phase IA Property, to permit the Phase IA Owner to install, use, maintain, repair and replace components and equipment serving the Phase IA Property (other than utility facilities, which are the subject of Section 2.2.3). Phase IB Owner shall consider such requests in good faith, and, provided that Phase IB Owner determines, in Phase IB Owner's reasonable discretion, that any such requested easement (a) would not materially increase the cost of constructing or operating the Phase IB Improvements, and (b) would not otherwise materially adversely affect the use, operation or appearance of the Phase IB Improvements, Phase IB Owner shall grant such easement to Phase IA Owner on and subject to such terms as Phase IB Owner may reasonably require (other than any fee or other compensation).

2.3 Provisions Applicable Generally to Easements. The following provisions shall apply generally to all of the Easements, except to the extent inconsistent with specific provisions set forth in Sections 2.1 and 2.2:

(a) The Easements do not authorize any Property Permittee to materially interfere with or delay: (i) any construction, maintenance or repair of any Property by the applicable Owner thereof; or (ii) the day-to-day normal operation of any Property.

(b) Each Owner shall be responsible for any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorneys' fees, arising from the use

EXHIBIT 10A-14

of the Easements by any Property Permittee with respect to such Owner's Property. Each Owner shall maintain or cause to be maintained sufficient liability and excess liability insurance to cover the matters which are the subject of such hold harmless agreement.

(c) If any Property Permittee damages another Owner's Property in using an Easement, the applicable Owner will promptly repair or cause to be repaired such damage; subject, however, to any applicable waiver of claim or subrogation provision herein or in any applicable insurance policy.

(d) The Easements do not authorize any Property Permittee to use the Easements other than for their intended purposes, in a safe and proper manner, in compliance with all Legal Requirements, and in such a manner as not to damage the respective Property.

(e) Phase 1A Owner may from time to time relocate the Phase 1A Easements established by Sections 2.1.3, 2.1.4, 2.1.5 and 2.1.6, provided that: (i) Phase 1A Owner gives at least 90 days prior written notice of the relocation to Phase 1B Owner (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) Phase 1A Owner pays the expenses reasonably incurred by Phase 1B Owner in connection with the relocation; and (iii) the relocation does not materially, adversely affect or interfere with Phase 1B Owner's use of such Phase 1A Easement or the Phase 1B Improvements.

(f) Phase 1B Owner may from time to time relocate the Phase 1B Easements established by Sections 2.2.3, 2.2.4 and 2.2.5, provided that: (i) Phase 1B Owner gives at least 90 days prior written notice of the relocation to Phase 1A Owner (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) Phase 1B Owner pays the expenses reasonably incurred by Phase 1A Owner in connection with the relocation; and (iii) the relocation does not materially, adversely affect or interfere with Phase 1A Owner's use of such Phase 1B Easement or the Phase 1A Improvements.

(g) There shall be no third party beneficiaries of the Easements, other than Property Permittees.

ARTICLE 3 INSURANCE

3.1 Owners' Insurance. Each Property Owner shall maintain, or cause to be maintained, the insurance coverages provided for below in this Section 3.1:

3.1.1 General Liability. Each Owner shall maintain, or cause to be maintained, commercial general liability insurance with respect to its Property operations, including insurance for claims arising from contractual liability, with annual limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, subject to adjustment as provided in Section 3.2. Each Owner's obligations with respect to commercial general liability insurance may be satisfied by the inclusion of its Property within the coverage of a "blanket" policy of insurance provided that the limit of liability shall apply on a "per location" basis

to its Property and shall not be defeated by losses paid for any other location covered under the policy.

3.1.2 Builder's Risk. At all times during the construction of its Improvements, each Owner shall maintain, or cause to be maintained, all risk builder's risk insurance, with earthquake coverage, for the full replacement value thereof (subject to a commercially reasonable sublimit for earthquake coverage).

3.1.3 Property. At all times after completion of construction of any of its Improvements, each Owner shall maintain, or cause to be maintained, insurance coverage at least as broad as ISO Special Form Coverage insuring against risks of direct physical loss or damage (commonly known as "all risk"), written at full replacement cost value, with agreed value endorsement, for such portion of its Improvements. An Owner's obligations with respect to property insurance may be satisfied by the inclusion of its Property within the coverage of a "blanket" policy of insurance provided that the policy specify such Property. An Owner shall be permitted to insure under policies that include deductibles to a limit not exceeding \$50,000.

3.1.4 Contractor's Liability. At all times during the construction of any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (b) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (c) worker's compensation insurance to the statutory amount, and (d) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on diseases (all such minimum limits being subject to adjustment as provided in Section 1.2).

3.1.5 Umbrella/Excess Liability. At all times during the construction of or any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, umbrella and excess liability insurance with a minimum limit of \$5,000,000 for all insurance specified in Section 3.1.4, except worker's compensation insurance.

3.1.6 Professional Liability. At all times during the design and construction of any of its Improvements, each Owner shall maintain, or cause its outside architects and engineers performing the design work for such Improvements to maintain, architects' and engineers' professional liability insurance, on a claims-made basis, with a minimum limit of \$2,000,000 per claim and in the aggregate, subject to adjustment as provided in Section 3.2.

3.1.7 General Requirements. All insurance policies required to be maintained pursuant to the above provisions of this Section 3.1 shall be issued by insurance companies rated A VII or better by the current Best's Key Rating Guide or the equivalent in subsequent editions and authorized to do business in the State of Ohio. All such insurance policies shall: (a) where appropriate, name the other Owner(s) and their employees and agents and, at the request of the other Owner's, their Mortgagees as additional insureds; (b) stipulate where appropriate that such insurance is primary and is not additional to any insurance carried by the other Owners; (c) if

appropriate, contain a waiver of subrogation provision as contemplated by Section 3.3; (d) contain within the policy or by endorsement a cross liability or severability of interest clause; and (e) provide that the insurance may not be canceled without at least 30 days prior notice to the other Owners. At the request of each Owner from time to time, an Owner will furnish to such Owner certificates of insurance evidencing the required insurance coverages. Any claims-made policy will include a tail of at least two years or evidence that the coverage remains in effect at least two years after completion of the matter which is the subject of the policy.

3.2 Adjustment of Minimum Limits. The minimum limits for the various insurance coverages provided for in Section 3.1 are subject to adjustment to a higher amount as each Owner may reasonably require from time to time, taking into account amounts continuously carried with respect to comparable properties in the Cincinnati metropolitan area; provided that as a condition of increasing any such limits, the Party requiring such increase must, as a condition of such increase, increase the limits of the corresponding insurance coverages carried or required to be carried by it to at least the same limit.

3.3 Waiver of Subrogation. To the extent permitted by law, each Owner waives and releases the others from any and all liability for any loss or damage caused by fire, any of the extended coverage casualties, or other casualties insured against or required to be insured against (including by self-insurance), even if such fire or other casualty shall be brought about by the fault or negligence of the Party benefited by the release or its agents. Each Owner shall have its insurance policies issued in such form as to waive any right of subrogation as might otherwise exist.

ARTICLE 4 ADDITIONAL PROVISIONS

4.1 Continuing Effect of Specific Declaration. The Property is subject to that certain Specific Declaration of Easements, Covenants, Conditions and Restrictions by Phase 1A Owner, Phase 1B Owner, The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio (the "County"), and The City of Cincinnati, Ohio (the "City"), dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2105, Recorder's Office, Hamilton County, Ohio (the "Specific Declaration"). The Specific Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the Specific Declaration.

4.2 Continuing Effect of General Declaration. The Property is subject to that certain General Declaration of Covenants, Conditions and Restrictions by the County and the City, dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2231, Recorder's Office, Hamilton County, Ohio (the "General Declaration"). The General Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the General Declaration.

4.3 Continuing Effect of Parking Agreement. The Property is subject to that certain First Amended and Restated Master Parking Facilities Operating and Easement

Agreement by the County and Riverbents Renaissance, LLC, dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2252, Recorder's Office, Hamilton County, Ohio, as joined in by each Owner pursuant to a Joinder agreement dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2696, and Official Record Book 11294, Page 2703, Recorder's Office, Hamilton County, Ohio (the "Master Parking Agreement"). The Master Parking Agreement shall continue in full force and effect, and this Declaration shall not supersede nor replace the Master Parking Agreement.

4.4 Additional Declarations. Owners may subject the Phase 1A Property and the Phase 1B Property (both collectively and individually) to additional declarations of easements, covenants, conditions and restrictions (including, without limitation, condominium declarations), and nothing in this Declaration shall prohibit or preclude any such additional declarations.

ARTICLE 5 ENFORCEMENT

5.1 Default Notice. At any time as of which there exists a default under this Declaration by or through an Owner, any other Owner may give such Owner a notice which identifies such default and sets forth a period of time for the cure of such default. Any notice given pursuant to the above provisions of this Section 5.1 is called a "Default Notice." The period of time for cure to be set forth in any Default Notice shall be such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default, provided that such period shall not be less than ten days for a monetary default nor less than 30 days for a non-monetary default.

5.2 Enforcement. Each Party shall have the right to enforce this Declaration in any manner provided by law or equity. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing Party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. Default under any of the terms of this Declaration shall give each non-defaulting Party a right of action in any court of competent jurisdiction to compel compliance and/or to prevent the default, and the expense of such litigation shall be borne by the defaulting Party, provided such proceeding confirms the alleged default. Expenses of litigation shall include reasonable attorneys' fees and expense incurred by each non-defaulting Party in enforcing this Declaration.

5.3 Self-Help. Without limiting the provisions of Section 5.2, (a) should any defaulting Party fail to remedy any default identified in a Default Notice within the reasonable cure period specified in such Default Notice, or (b) should any default under this Declaration exist which (i) constitutes or creates an immediate threat to health or safety, or (ii) constitutes or creates an immediate threat of damage to or destruction of property, then, in any such event, the non-defaulting Party(ies) shall have the right, but not the obligation, to enter upon the property of the defaulting Party(ies) to take such steps as such non-defaulting Party(ies) may elect to cure, or cause to be cured, such default. If a non-defaulting Party cures, or causes to be cured, a default

as provided above in this Section 5.3, then there shall be due and payable by the defaulting Party to each non-defaulting Party upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party in pursuing such cure, plus interest thereon from the date of demand at the rate of 12% per annum.

5.4 Lien. Until fully paid, any past due payment obligations of a Property Owner under this Declaration shall, upon the filing of a notice thereof in the appropriate land records, constitute a lien against the interest of such Party in the applicable Property for the full amount of such unpaid obligations. Upon proper payment, the Party that filed any such lien promptly shall cause such lien to be released of record. The priority of any lien imposed against the interest of a Property Owner in the applicable Property pursuant to this Section 5.4 shall be based upon the time of recording, provided that such lien shall in any event be subordinate to the lien of the holder of any bona fide Mortgage on such interest.

ARTICLE 6 GENERAL PROVISIONS

6.1 Enforced Certification. Each Party (the "Responding Party") shall, from time to time, within ten days after written request by another Party (the "Requesting Party"), execute and deliver to the Requesting Party and/or such third party designated by the Requesting Party a statement in writing certifying (a) that (except as may be otherwise specified by the Responding Party) (i) this Declaration is presently in full force and effect and unmodified, (ii) the Responding Party is not in default in the performance or observance of its obligations under this Declaration, and (iii) to the Responding Party's actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party's obligations under this Declaration, and (b) as to such other factual matters as the Requesting Party may reasonably request about this Declaration, the status of any matter relevant to this Declaration, or the performance or observance of the provisions of this Declaration.

6.2 Notice. Any notice to be given under this Declaration shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as each Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by teletype or personal delivery.

If to Phase 1A Owner: Riverbanks Renaissance Phase 1-A Owner, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30163
Attn: Scott D. Springer
Teletype: (404) 888-3044
Telephone: (404) 888-4340

13

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and

Riverbanks Renaissance Phase 1-A Owner, LLC
c/o Harold A. Dewson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303
Attn: Jerome Hagley, Executive Vice President
Teletype: (404) 347-8040
Telephone: (404) 446-3561

and

Loadstar, Inc.
9838 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Legal Department
Teletype: (210) 579-1035
Telephone: (210) 641-8468

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest Labmont Green, Esq.
Teletype: (678) 553-2212
Telephone: (678) 553-2420

and

Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4330
Attn: R. Bailey Teague, Jr., Esq.
Teletype: (404) 541-3245
Telephone: (404) 815-6181

14

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If 1st Phase IB Count:

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with a copy to:

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6.3 Block Excess Duration. This Declaration shall run with the land, shall bind and inure to the benefit of the Parties and their respective successors and assigns, and shall be enforceable as provided herein for a term of 99 years from the effective date of this Declaration; provided that the easements established by this Declaration shall survive termination of this Declaration.

6.4 Amendments. This Declaration may be amended only by a writing signed by the Parties. Any such amendment to this Declaration shall become effective upon recordation in the Office of the Recorder of Hamilton County, Ohio.

6.5 Calculation of Time Periods. In computing any period of time set forth in this Declaration, the day of the act, event or notice after which the designated period of time begins to run is not included and the last day of the period so computed is included, unless such last day is not a business day, in which event the period of time shall run until the end of the next day which is a business day.

6.6 Severability. If any provision of this Declaration or its application to any party or circumstance shall to any extent be in violation of or unenforceable under any law, rule, regulation or order now existing or hereafter enacted or entered by any court or other governmental entity having jurisdiction, the remainder of this Declaration, at the application of such provision to parties or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

6.7 Choice Of Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Ohio.

6.3 Jurisdiction and Venue. All actions or proceedings arising in connection with this Declaration shall be tried and litigated only in state or federal courts located in Hamilton County, Ohio having subject matter jurisdiction over the matter in controversy. This choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 6.3.

6.9 Usage. Whenever used, the singular shall include the plural and the plural shall include the singular, and the use of any gender shall include all genders.

6.10 Captions. The captions to the Articles and Sections of this Declaration are included only for convenient reference, and shall not affect the meaning or interpretation of this Declaration.

6.11 Waiver. No failure on the part of a Party to give notice of default or to exercise any right or remedy hereunder shall operate as a waiver, except as specifically provided.

6.12 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be a duplicate original, but all of which shall constitute the same Declaration.

6.13 Third Parties. This Declaration may be enforced only by the Parties, their respective successors and assigns, and Mortgagees of any portion of the Property. Except as set forth in the immediately preceding sentence, there shall be no third party beneficiaries of this Declaration; provided that Property Permittees shall be entitled to the benefit of the Easements.

6.15 Release from Liability. Each Property Owner (a) shall be bound by this Declaration only with respect to the period that such Person is a Property Owner; (b) shall be liable only for the obligations, liabilities or responsibilities with respect to their portion of the Property under this Declaration that accrue during such period; and (c) upon its conveyance (other than by Mortgage) of its Property, shall be released from any and all liabilities and obligations under this Declaration with respect to the property so conveyed which accrue after the date the instrument of conveyance is recorded in the Office of the Recorder of Hamilton County, Ohio.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

17

USPDC FORM 1

The Parties have executed this Declaration as of the date first set forth above.

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-A Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: _____
Name: _____
Title: _____

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-B Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: _____
Name: _____
Title: _____

18

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of ____, 2010,
by _____ of Riverbanks Renaissance Phase I-A Equity,
LLC, the Managing Member of Riverbanks Renaissance Phase I-A Joint Venture, LLC, the sole
Member of Riverbanks Renaissance Phase I-A Mezzanine, the sole Member of Riverbanks
Renaissance Phase I-A Owner, LLC, a Delaware limited liability company, on behalf of the
company.

Notary Public

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of ____, 2010,
by _____ of Riverbanks Renaissance Phase I-B Equity,
LLC, the Managing Member of Riverbanks Renaissance Phase I-B Joint Venture, LLC, the sole
Member of Riverbanks Renaissance Phase I-B Mezzanine, the sole Member of Riverbanks
Renaissance Phase I-B Owner, LLC, a Delaware limited liability company, on behalf of the
company.

Notary Public

This instrument was prepared by:
R. Bailey Teague, Jr.
Kiparrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309

EXHIBITS

EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D
EXHIBIT E

Legal Description of Lot 26B-1A
Legal Description of Lot 26B-1B
Site Plan depicting Lot 26B-1A and Lot 26B-1B
Site Plan depicting Phase 1A Easements - Access Drives and Ramps,
Service Drives, Stairwell
Site Plan depicting Phase 1B Easements - Access Drive, Service Drive

EXHIBIT A

Legal Description of Lot 26B-1A

Lot 26B-1A:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio, and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Second Street (an undedicated right-of-way) and in the north line of said Lot 26B of The Banks Phase IV, said point being North 80°22'31" East, 132.50 feet from the northwest corner of Lot 26B and also from the intersection of said south line of Second Street with the east line of Walnut Street (a 70' right-of-way); thence along said lines of Second Street and Lot 26B, North 80°22'31" East, 262.25 feet to the intersection of said south line of Second Street with the west line of Main Street (a 70' right-of-way); said point also being the southeast corner of said Lot 26B; thence along said lines of Main Street and Lot 26B, South 93°37'29" East, 285.00 feet to the intersection of said west line of Main Street with the north line of Freedom Way (a 70' right-of-way); said point also being the southeast corner of said Lot 26B; thence along said lines of Freedom Way and Lot 26B, South 80°22'31" West, 394.75 feet to the intersection of said north line of Freedom Way with the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 26B; thence along said line of Walnut Street and west line of Lot 26B, North 93°37'29" West, 91.67 feet to a point; thence North 80°22'31" East, 132.50 feet to a point; thence North 93°37'29" West, 193.33 feet to the **POINT OF BEGINNING**; said tract of land containing 1.9946 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

LS0046 9/28/11 4

EXHIBIT B

Legal Description of Lot 26B-1B

Lot 26B-1B:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio, and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the south line of Second Street (an undedicated right-of-way) with the east line of Walnut Street (a 70' right-of-way); said point also being the northwest corner of said Lot 26B; thence along said lines of Second Street and Lot 26B, North 80°22'31" East, 132.50 feet to a point; thence South 93°37'29" East, 193.33 feet to a point; thence South 80°22'31" West, 132.50 feet to a point in the aforesaid east line of Walnut Street and also in the west line of said Lot 26B; thence along said lines of Walnut Street and Lot 26B, North 93°37'29" West, 193.33 feet to the **POINT OF BEGINNING**; said tract of land containing 0.5881 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

LS0046 9/28/11 4

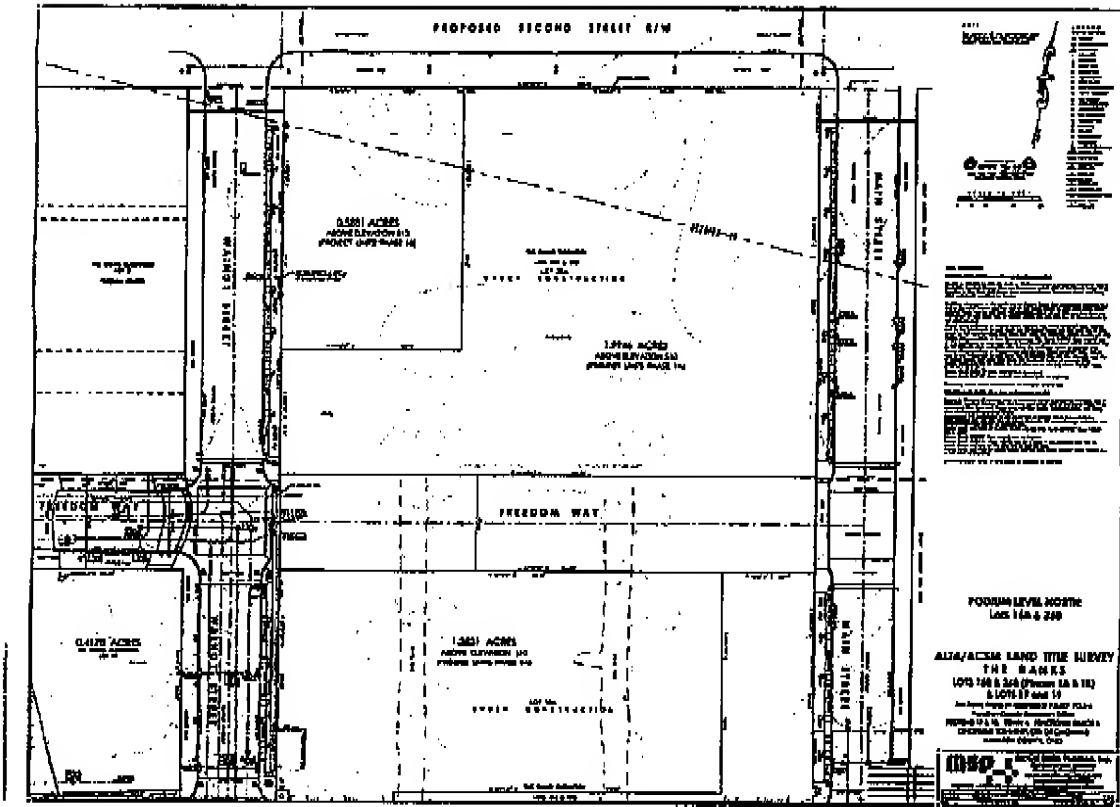


EXHIBIT C

Site Plan depicting Lot 248-1A and Lot 26B-1B

See attached.

EXHIBIT D

Site Plan depicting Phase 1A Escarpment

See attached.
(To Come)

EXHIBIT E

Site Plan depicting Phase 1A Escarpment

See attached.
(To Come)

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EXHIBIT "N"

**Declaration of Easements, Covenants, Conditions and Restrictions
(Lot 16B, The Banks, Phase IV)**

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Lot 168, The Banks, Phase IV)

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into as of the _____ day of December, 2010, by RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-A Owner"), and RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-B Owner") (Phase I-A Owner and Phase I-B Owner being called, collectively, "Owners" and, individually, as "Owner").

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Lot 168, The Banks, Phase IV)

BY

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,

AND

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC.

Recitals

A. Phase I-A Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described on Exhibit A attached hereto (the "Phase I-A Property").

B. Phase I-B Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described on Exhibit B attached hereto (the "Phase I-B Property").

C. The Phase I-A Property and the Phase I-B Property are depicted in Exhibit C attached hereto. The Phase I-A Property and the Phase I-B Property are collectively called the "Property."

D. Phase I-A Owner intends to construct improvements on the Phase I-A Property (the "Phase I-A Improvements") and Phase I-B Owner intends to construct improvements on the Phase I-B Property (the "Phase I-B Improvements"). The Phase I-A Improvements and the Phase I-B Improvements are collectively called the "Improvements."

E. Phase I-A Owner and Phase I-B Owner desire to enter into this Declaration in order to establish certain easements, covenants, conditions and restrictions regarding the Phase I-A Property and the Phase I-B Property, and to set forth certain other agreements among themselves regarding the Phase I-A Property and the Phase I-B Property that are intended to run with the land.

Statement of Declaration

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Phase I-A Owner and Phase I-B Owner hereby declare that the Phase I-A Property and the Phase I-B Property are and shall be subject to the easements, covenants, conditions, restrictions and other provisions set forth below.

ARTICLE I DEFINITIONS

1.1 Definitions. As used in this Declaration, the following terms have the meanings given below:

"Foreclosure" means, without limitation: (a) the judicial foreclosure of a Mortgage; (b) the exercise of a power of sale contained in any Mortgage; (c) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; or (d) any action commenced or taken by a lessor to regain possession or control of property leased under a sale/leaseback.

"Legal Requirements" means all applicable laws, statutes, ordinances, rules, regulations and requirements of governmental authorities, including, but not limited to, zoning and land use laws and building codes.

"Mortgage" means any encumbrance of any portion of the Property as security for any indebtedness or other obligation of a Property Owner or its successors and assigns, whether by mortgage, deed of trust, sale/leaseback, pledge, financing statement, security agreement, or other security instrument; provided, however, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purposes of this Declaration, other than for purposes of Section 5.4.

"Mortgagee" means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or the heirs, legal representatives, successors, transferees and assigns of such initial holder.

"Owner" and **"Owners"** have the meanings given in the introductory paragraph of this Declaration.

"Party" means each of the Phase IA Owner and Phase IB Owner. **"Parties"** means, collectively, the Phase IA Owner and Phase IB Owner.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, joint stock company, trust, unincorporated association, institution, entity or governmental authority.

"Property Owner" means, with respect to any portion of the Property, the owner of the fee simple interest in such portion of the Property. As of the date of this Declaration, Phase IA Owner is the Property Owner with respect to the Phase IA Property and Phase IB Owner is the Property Owner with respect to the Phase IB Property. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed a Property Owner with respect to the portion of the Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagor from possession by appropriate legal

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3

proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through foreclosure;

(b) a tenant or lessee of space in the Property shall not be deemed a Property Owner;

(c) if any portion of the Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Property Owner with respect to such portion of the Property;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Property shall not be deemed the Property Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event a Property Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such Persons shall, within 30 days after the date of their acquisition of any portion of the Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Property Owner as their designated agent to receive all notices and demands to be given to such Property Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by such Property Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is an Property Owner for the purposes of exercising any rights of such Property Owner under this Declaration. Such Persons comprising a Property Owner may change their designated agent by written notice to the Parties, but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising such Property Owner appointing and authorizing one of such Persons comprising such Property Owner to act as attorney-in-fact pursuant to such power of attorney.

"Property Permitted" means, with respect to any portion of the Property, the Property Owner, any manager engaged to manage such portion of the Property, any owner of an individual condominium unit or cooperative ownership interest in such portion of the Property, tenants and subtenants of such portion of the Property, and their respective employees, agents, contractors, guests and invitees.

ARTICLE 2 EASEMENTS

2.1 **Easements in the Phase IA Property for Benefit of the Phase IB Property**. There are hereby established and created, and Phase IA Owner hereby grants to Phase IB Owner, easements in the Phase IA Property for the benefit of the Phase IB Property, as set forth below in this Section 2.1 (collectively, the **"Phase IA Easements"**), on and subject to the terms and conditions set forth herein.

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2.1.1 Construction Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property as reasonably necessary to facilitate construction work on the Phase 1B Improvements. This easement shall be in effect for the benefit of Phase 1B Owner during the period of construction of any of the Phase 1B Improvements and during the period of any reconstruction of any of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.2 Maintenance, Repair and Alteration Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform maintenance and repair on the Phase 1B Improvements; and (b) facilitate alterations of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.3 Utility Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use those portions of the Phase 1A Property designed therefor (including portions of the property below the concrete podium slab) to install, use, maintain, repair and replace utility facilities (including, without limitation, cooling tower condenser water lines) serving the Phase 1B Property. The location of any utility lines or conduits on the Phase 1A Property by Phase 1B Owner shall be subject to the approval of Phase 1A Owner and shall not interfere with or obstruct the utility lines or conduits serving the Phase 1A Property.

2.1.4 Access Drives and Ramps. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use the access drives and ramps within the Phase 1A Property as shown on Exhibit D for vehicular access (but not parking) by Property Permittees of the Phase 1B Property in connection with use of parking spaces in the parking facility located below the Phase 1A Property and the Phase 1B Property.

2.1.5 Service Drives. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use the service drives within the Phase 1A Property as shown on Exhibit E for vehicular access (but not parking) by Property Permittees of the Phase 1B Property for access to and from the Phase 1B Property and Walnut Street.

2.1.6 Turnaround Drives. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual easement to use an access drive within the Phase 1A Property in a location and up to an elevation to be agreed by the Phase 1A Owner and the Phase 1B Owner for vehicular access (but not parking) by Property Permittees of the Phase 1B Property.

2.1.7 Crane Setup Easement. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, temporary easement for the hoists and associated tackle of construction cranes located on and operating from the Phase 1B Property to enter and encroach into, onto, and/or through the air space located above the Phase 1A Property and any improvements located thereon. The travel paths of such construction cranes shall be delivered to Phase 1A Owner prior to use thereof. The foregoing easement shall commence on the date the use of such easement is necessary for the performance of construction activities on the Phase 1B Property and shall automatically terminate without further action by Phase 1A Owner or Phase 1B Owner at such time as Phase 1B Owner completes the construction activities on the Phase 1B Property requiring the use of the applicable construction crane(s), but in any event, not later than the date a certificate of occupancy is issued for all improvements on the Phase 1B Property.

2.1.8 Easement for Encroachments. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, an exclusive, perpetual easement for the encroachment of the Phase 1B Improvements, as constructed, on the Phase 1A Property arising by reason of: (a) nonmaterial encroachments of the Phase 1B Improvements on the Phase 1A Property; or (b) shifting, settlement or movement of the Phase 1B Improvements after construction.

2.1.9 Easement to Enter to Cure Defaults. There is established and created, and Phase 1A Owner grants to Phase 1B Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property from time to time, upon reasonable prior notice except in the case of an emergency, for the purpose of performing any obligation of Phase 1A Owner with respect to the Phase 1A Property which Phase 1A Owner is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.1.10 Additional Easements. Phase 1B Owner may from time to time request additional easements in the Phase 1A Property for the benefit of the Phase 1B Property, to permit the Phase 1B Owner to install, use, maintain, repair and replace components and equipment serving the Phase 1B Property (other than utility facilities, which are the subject of Section 2.1.3). Phase 1A Owner shall consider such requests in good faith, and, provided that Phase 1A Owner determines, in Phase 1A Owner's reasonable discretion, that any such requested easement (a) would not materially increase the cost of constructing or operating the Phase 1A Improvements, and (b) would not otherwise materially adversely affect the use, operation or appearance of the Phase 1A Improvements, Phase 1A Owner shall grant such easement to Phase 1B Owner on and subject to such terms as Phase 1A Owner may reasonably require (other than any fee or other compensation).

2.2 Easements in the Phase 1B Property for Benefit of the Phase 1A Property. There are hereby established and created, and Phase 1B Owner hereby grants to Phase 1A Owner, easements in the Phase 1B Property for the benefit of the Phase 1A Property, as set forth below in this Section 2.2 (collectively, the "Phase 1B Easements"; the Phase 1A Easements and the

Phase 1B Easements are collectively called the "Easement(s)", on and subject to the terms and conditions set forth herein.

2.2.1 Construction Easement. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property as reasonably necessary to facilitate construction work on the Phase 1B Improvements. This easement shall be in effect for the benefit of Phase 1B Owner during the period of construction of any of the Phase 1B Improvements and during the period of any reconstruction of any of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.2.2 Maintenance, Repair and Alteration Easement. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1A Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform maintenance and repair on the Phase 1B Improvements; and (b) facilitate alterations of the Phase 1B Improvements. Phase 1B Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1A Property, to the extent practical.

2.2.3 Utility Easement. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual easement to use those portions of the Phase 1B Property designed therefor (including portions of the property below the concrete podium slab) to install, use, maintain, repair and replace utility facilities (including, without limitation, cooling tower condenser water lines) serving the Phase 1A Property. The location of any utility lines or conduits on the Phase 1B Property by Phase 1A Owner shall be subject to the approval of Phase 1B Owner and shall not interfere with or obstruct the utility lines or conduits serving the Phase 1B Property.

2.2.4 Access Drive. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual easement to use the access drive within the Phase 1B Property as shown on Exhibit E up to an elevation of 12 feet above surface grade for vehicular access (but not parking) by Property Permittees of the Phase 1A Property for access to and from the Phase 1A Property and Main Street.

2.2.5 Service Drives. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual easement to use the service drives within the Phase 1B Property as shown on Exhibit E up to an elevation of 12 feet above surface grade for vehicular access (but not parking) by Property Permittees of the Phase 1A Property for access to and from the Phase 1A Property and service drives on the Phase 1A Property.

2.2.6 Crane Service Easement. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, temporary easement for the hoists and associated tackle of construction cranes located on and operating from the Phase 1A Property to enter and encroach into, onto, and/or through the air space located above the Phase 1B Property and

any Improvements located thereon. The travel paths of such construction cranes shall be delivered to Phase 1B Owner prior to use thereof. The foregoing easement shall commence on the date the use of such easement is necessary for the performance of construction activities on the Phase 1A Property and shall automatically terminate without further action by Phase 1A Owner or Phase 1B Owner at such time as Phase 1A Owner completes the construction activities on the Phase 1A Property requiring the use of the applicable construction crane(s), but in any event, not later than the date a certificate of occupancy is issued for all Improvements on the Phase 1A Property.

2.2.7 Easement for Encroachments. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, an exclusive, perpetual easement for the encroachment of the Phase 1A Improvements, as constructed, on the Phase 1B Property arising by reason of: (a) structural encroachments of the Phase 1A Improvements on the Phase 1B Property; or (b) shifting, settlement or movement of the Phase 1A Improvements after construction.

2.2.8 Easement to Enter to Cure Defaults. There is established and created, and Phase 1B Owner grants to Phase 1A Owner, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Phase 1B Property from time to time, upon reasonable prior notice except in the case of an emergency, for the purpose of performing any obligation of Phase 1B Owner with respect to the Phase 1B Property which Phase 1B Owner is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). Phase 1A Owner shall use this easement in such a manner as to minimize interference with the use and operation of the Phase 1B Property, to the extent practical.

2.2.9 Additional Easements. Phase 1A Owner may from time to time request additional easements in the Phase 1B Property for the benefit of the Phase 1A Property, to permit the Phase 1A Owner to install, use, maintain, repair and replace components and equipment serving the Phase 1A Property (other than utility facilities, which are the subject of Section 2.2.3). Phase 1B Owner shall consider such requests in good faith, and, provided that Phase 1B Owner determines in Phase 1B Owner's reasonable discretion, that any such requested easement (a) would not materially increase the cost of constructing or operating the Phase 1B Improvements, and (b) would not otherwise materially adversely affect the use, operation or appearance of the Phase 1B Improvements, Phase 1B Owner shall grant such easement to Phase 1A Owner on and subject to such terms as Phase 1B Owner may reasonably require (other than any fee or other compensation).

2.3 Provisions Applicable Generally to Easements. The following provisions shall apply generally to all of the Easements, except to the extent inconsistent with specific provisions set forth in Sections 2.1 and 2.2:

(a) The Easements do not authorize any Property Permittee to materially interfere with or delay: (i) any construction, maintenance or repair of any Property by the applicable Owner thereof; or (ii) the day-to-day normal operation of any Property.

(d) Each Owner shall be responsible for any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorneys' fees, arising from the use of the Easements by any Property Permittee with respect to such Owner's Property. Each Owner shall maintain or cause to be maintained sufficient liability and excess liability insurance to cover the matters which are the subject of each hold harmless agreement.

(e) If any Property Permittee damages another Owner's Property in using an Easement, the applicable Owner will promptly repair or cause to be repaired such damage; subject, however, to any applicable waiver of claim or subrogation provision herein or in any applicable insurance policy.

(f) The Easements do not authorize any Property Permittee to use the Easements other than for their intended purposes, in a safe and proper manner, in compliance with all Legal Requirements, and in such a manner as not to damage the respective Property.

(g) Phase 1A Owner may from time to time relocate the Phase 1A Easements established by Sections 2.1.3, 2.1.4, 2.1.5 and 2.1.6, provided that: (i) Phase 1A Owner gives at least 90 days prior written notice of the relocation to Phase 1B Owner (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) Phase 1A Owner pays the expenses reasonably incurred by Phase 1B Owner in connection with the relocation; and (iii) the relocation does not materially, adversely affect or interfere with Phase 1B Owner's use of such Phase 1A Easement or the Phase 1B Improvements.

(h) Phase 1B Owner may from time to time relocate the Phase 1B Easements established by Sections 2.2.3, 2.2.4 and 2.2.5, provided that: (i) Phase 1B Owner gives at least 90 days prior written notice of the relocation to Phase 1A Owner (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) Phase 1B Owner pays the expenses reasonably incurred by Phase 1A Owner in connection with the relocation; and (iii) the relocation does not materially, adversely affect or interfere with Phase 1A Owner's use of such Phase 1B Easement or the Phase 1A Improvements.

(i) There shall be no third party beneficiaries of the Easements, other than Property Permittees.

ARTICLE 3 INSURANCE

3.1 Owners' Insurance. Each Property Owner shall maintain, or cause to be maintained, the insurance coverages provided for below in this Section 3.1:

3.1.1 General Liability. Each Owner shall maintain, or cause to be maintained, commercial general liability insurance with respect to its Property operations, including insurance for claims arising from contractual liability, with annual limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, subject to adjustment as provided in Section 3.2. Each Owner's obligations with respect to commercial

general liability insurance may be satisfied by the inclusion of its Property within the coverage of a "blanket" policy of insurance provided that the limit of liability shall apply on a "per location" basis to its Property and shall not be defeated by losses paid for any other location covered under the policy.

3.1.2 Builder's Risk. At all times during the construction of its Improvements, each Owner shall maintain, or cause to be maintained, all risk builder's risk insurance, with earthquake coverage, for the full replacement value thereof (subject to a commercially reasonable sublimit for earthquake coverage).

3.1.3 Property. At all times after completion of construction of any of its Improvements, each Owner shall maintain, or cause to be maintained, insurance coverage at least as broad as ISO Special Form Coverage insuring against risks of direct physical loss or damage (commonly known as "all risk"), written at full replacement cost value, with agreed value endorsement, for such portion of its Improvements. An Owner's obligations with respect to property insurance may be satisfied by the inclusion of its Property within the coverage of a "blanket" policy of insurance provided that the policy specify such Property. An Owner shall be permitted to insure under policies that include deductibles to a limit not exceeding \$50,000.

3.1.4 Contractor's Liability. At all times during the construction of any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (b) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (c) worker's compensation insurance in the statutory amount, and (d) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on diseases (all such minimum limits being subject to adjustment as provided in Section 3.2).

3.1.5 Umbrella/Excess Liability. At all times during the construction of or any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, umbrella and excess liability insurance with a minimum limit of \$5,000,000 for all insurance specified in Section 3.1.4, except worker's compensation insurance.

3.1.6 Professional Liability. At all times during the design and construction of any of its Improvements, each Owner shall maintain, or cause its outside architects and engineers performing the design work for such Improvements to maintain, architects' and engineers' professional liability insurance, on a claims-made basis, with a minimum limit of \$2,000,000 per claim and in the aggregate, subject to adjustment as provided in Section 3.2.

3.1.7 General Requirements. All insurance policies required to be maintained pursuant to the above provisions of this Section 3.1 shall be issued by insurance companies rated A VII or better by the current Best's Key Rating Guide or the equivalent in subsequent editions and authorized to do business in the State of Ohio. All such insurance policies shall: (a) where appropriate, name the other Owner(s) and their employees and agents and, at the request of the

other Owner's, their Mortgagees as additional insureds; (b) stipulate where appropriate that such insurance is primary and is not additional to any insurance carried by the other Owners; (c) if appropriate, contain a waiver of subrogation provision as contemplated by Section 3.3; (d) contain within the policy or by endorsement a cross liability or severability of interest clause; and (e) provide that the insurance may not be canceled without at least 30 days prior notice to the other Owners. At the request of each Owner from time to time, an Owner will furnish to such Owner certificates of insurance evidencing the required insurance coverages. Any claims-made policy will include a tail of at least two years or evidence that the coverage remains in effect at least two years after completion of the matter which is the subject of the policy.

3.2 Adjustment of Minimum Limits. The minimum limits for the various insurance coverages provided for in Section 3.1 are subject to adjustment to a higher amount as each Owner may reasonably require from time to time, taking into account amounts commonly carried with respect to comparable properties in the Cincinnati metropolitan area; provided that as a condition of increasing any such limits, the Party requiring such increase must, as a condition of such increase, increase the limits of the corresponding insurance coverages carried or required to be carried by it to at least the same limits.

3.3 Waiver of Subrogation. To the extent permitted by law, each Owner waives and releases the others from any and all liability for any loss or damage caused by fire, any of the extended coverage casualties, or other casualties insured against or required to be insured against (including by self-insurance), even if such fire or other casualty shall be brought about by the fault or negligence of the Party benefited by the release or its agents. Each Owner shall have its insurance policies issued in such form as to waive any right of subrogation as might otherwise exist.

ARTICLE 4 ADDITIONAL PROVISIONS

4.1 Continuing Effect of Specific Declaration. The Property is subject to that certain Specific Declaration of Easements, Covenants, Conditions and Restrictions by Phase 1A Owner, Phase 1B Owner, The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio (the "County"), and The City of Cincinnati, Ohio (the "City"), dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2305, Recorder's Office, Hamilton County, Ohio (the "Specific Declaration"). The Specific Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the Specific Declaration.

4.2 Continuing Effect of General Declaration. The Property is subject to that certain General Declaration of Easements, Conditions and Restrictions by the County and the City, dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2331, Recorder's Office, Hamilton County, Ohio (the "General Declaration"). The General Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the General Declaration.

21

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4.3 Continuing Effect of Parking Agreement. The Property is subject to that certain First Amended and Restated Master Parking Facilities Operating and Easement Agreement by the County and Riverbanks Renaissance, LLC, dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2252, Recorder's Office, Hamilton County, Ohio, as joined in by each Owner pursuant to a joinder agreement dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2672, and Official Record Book 11294, Page 2679, Recorder's Office, Hamilton County, Ohio (the "Master Parking Agreement"). The Master Parking Agreement shall continue in full force and effect, and this Declaration shall not supersede nor replace the Master Parking Agreement.

4.4 Additional Declarations. Owners may subject the Phase 1A Property and the Phase 1B Property (both collectively and individually) to additional declarations of easements, covenants, conditions and restrictions (including, without limitation, condominium declarations), and nothing in this Declaration shall prohibit or preclude any such additional declarations.

ARTICLE 5 ENFORCEMENT

5.1 Default Notices. At any time as of which there exists a default under this Declaration by or through an Owner, any other Owner may give such Owner a notice which identifies such default and sets forth a period of time for the cure of such default. Any notice given pursuant to the above provisions of this Section 5.1 is called a "Default Notice." The period of time for cure to be set forth in any Default Notice shall be such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default, provided that such period shall not be less than ten days for a monetary default nor less than 30 days for a non-monetary default.

5.2 Enforcement. Each Party shall have the right to enforce this Declaration in any manner provided by law or equity. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing Party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. Defaults under any of the terms of this Declaration shall give each non-defaulting Party a right of action in any court of competent jurisdiction to compel compliance and/or to prevent the default, and the expense of such litigation shall be borne by the defaulting Party, provided such proceeding confirms the alleged default. Expenses of litigation shall include reasonable attorneys' fees and expense incurred by each non-defaulting Party in enforcing this Declaration.

5.3 Self-Help. Without limiting the provisions of Section 5.2, (a) should any defaulting Party fail to remedy any default identified in a Default Notice within the reasonable cure period specified in such Default Notice, or (b) should any default under this Declaration exist which (i) constitutes or creates an immediate threat to health or safety, or (ii) constitutes or creates an immediate threat of damage to or destruction of property, then, in any such event, the non-defaulting Party(ies) shall have the right, but not the obligation, to enter upon the property of

22

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the defaulting Party(ies) to take such steps as such non-defaulting Party(ies) may elect to cure, or cause to be cured, such default. If a non-defaulting Party cures, or causes to be cured, a default as provided above in this Section 5.3, then there shall be due and payable by the defaulting Party to each non-defaulting Party upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party in pursuing such cure, plus interest thereon from the date of demand at the rate of 12% per annum.

5.4 Lien. Unit fully paid, any past due payment obligations of a Property Owner under this Declaration shall, upon the filing of a notice thereof to the appropriate land records, constitute a lien against the interest of such Party in the applicable Property for the full amount of such unpaid obligations. Upon proper payment, the Party that filed any such lien promptly shall cause such lien to be released of record. The priority of any lien imposed against the interest of a Property Owner in the applicable Property pursuant to this Section 5.4 shall be based upon the time of recording; provided that such lien shall in any event be subordinate to the lien of the holder of any bona fide Mortgage on such interest.

ARTICLE 6 GENERAL PROVISIONS

6.1 Estimated Certifications. Each Party (the "Responding Party") shall, from time to time, within ten days after written request by another Party (the "Requesting Party"), execute and deliver to the Requesting Party and/or such third party designated by the Requesting Party a statement in writing certifying (a) that (except as may be otherwise specified by the Responding Party) (b) this Declaration is presently in full force and effect and unmodified, (c) the Responding Party is not in default in the performance or observance of its obligations under this Declaration, and (d) to the Responding Party's actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party's obligations under this Declaration, and (b) as to such other factual matters as the Requesting Party may reasonably request about this Declaration, the status of any matter relevant to this Declaration, or the performance or observance of the provisions of this Declaration.

6.2 Notices. Any notice to be given under this Declaration shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as each Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery:

If to Phase 1A Owner:

Riverbanks Renaissance Phase I-A Owner, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363
Attn: Scott D. Stringer
Telecopy: (404) 888-3044
Telephone: (404) 888-4340

and

Riverbanks Renaissance Phase I-A Owner, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303
Attn: Jerome Hadley, Executive Vice President
Telecopy: (404) 347-8040
Telephone: (404) 446-3361

and

Loudstar, Inc.
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Legal Department
Telecopy: (210) 579-1035
Telephone: (210) 641-8468

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest Lakshmi Greer, Esq.
Telecopy: (678) 553-2212
Telephone: (678) 553-2426

and

Kilpatrick Stockton LLP
Suite 2800
1108 Peachtree Street
Atlanta, GA 30309-4530
Attn: R. Bailey Teague, Jr., Esq.
Telecopy: (404) 541-3245
Telephone: (404) 815-6181

Y to Phase 1B Owner:

Riverbanks Renaissance Phase I-B Owner, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363
Attn: Scott D. Stringer
Telecopy: (404) 808-3044
Telephone: (404) 888-4340

and

Riverbanks Renaissance Phase I-B Owner, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303
Attn: Jerome Hagley, Executive Vice President
Telecopy: (404) 347-8040
Telephone: (404) 446-3561

and

US Real Estate Limited Partnership
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78238-2239
Attn: Legal Department
Telecopy: (210) 579-1035
Telephone: (210) 641-8468

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest Lambert Greer, Esq.
Telecopy: (678) 553-2212
Telephone: (678) 553-2420

and

Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
Attn: R. Bailey Teague, Jr., Esq.
Telecopy: (404) 541-3245
Telephone: (404) 815-6181

6.3 Binding Effect, Duration. This Declaration shall run with the land, shall bind and inure to the benefit of the Parties and their respective successors and assigns, and shall be enforceable as provided herein for a term of 99 years from the effective date of this Declaration; provided that the easements established by this Declaration shall survive termination of this Declaration.

6.4 Amendments. This Declaration may be amended only by a writing signed by the Parties. Any such amendment to this Declaration shall become effective upon recordation in the Office of the Recorder of Hamilton County, Ohio.

6.5 Calculation of Time Periods. In computing any period of time set forth in this Declaration, the day of the act, event or notice after which the designated period of time begins to run is not included and the last day of the period so computed is included, unless such last day is not a business day, in which event the period of time shall run until the end of the next day which is a business day.

6.6 Severability. If any provision of this Declaration or its application to any party or circumstance shall to any extent be in violation of or unenforceable under any law, rule, regulation or order now existing or hereafter enacted or entered by any court or other governmental entity having jurisdiction, the remainder of this Declaration, or the application of such provision to parties or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

6.7 Choice Of Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Ohio.

6.8 Jurisdiction and Venue. All actions or proceedings arising in connection with this Declaration shall be tried and litigated only in state or federal courts located in Hamilton County, Ohio having subject matter jurisdiction over the matter in controversy. This choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 6.8.

6.9 Usage. Whenever used, the singular shall include the plural and the plural shall include the singular, and the use of any gender shall include all genders.

6.10 Contraies. The captions to the Articles and Sections of this Declaration are included only for convenient reference, and shall not affect the meaning or interpretation of this Declaration.

6.11 Waiver. No failure on the part of a Party to give notice of default or to exercise any right or remedy hereunder shall operate as a waiver, except as specifically provided.

6.12 Counterparty. This Declaration may be executed in one or more counterparts, each of which shall be a duplicate original, but all of which shall constitute the same Declaration.

6.13 Third Parties. This Declaration may be enforced only by the Parties, their respective successors and assigns, and Mortgagees of any portion of the Property. Except as set forth in the immediately preceding sentence, there shall be no third party beneficiaries of this Declaration; provided that Property Permittees shall be entitled to the benefit of the Easements.

6.15 Release from Liability. Each Property Owner (a) shall be bound by this Declaration only with respect to the period that such Person is a Property Owner; (b) shall be liable only for the obligations, liabilities or responsibilities with respect to their portion of the Property under this Declaration that accrue during such period; and (c) upon its conveyance (other than by Mortgage) of its Property, shall be released from any and all liabilities and obligations under this Declaration with respect to the property so conveyed which accrue after the date the instrument of conveyance is recorded in the Office of the Recorder of Hamilton County, Ohio.

(SIGNATURES BEGIN ON FOLLOWING PAGE)

The Parties have executed this Declaration as of the date first set forth above.

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-A Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: _____
Name: _____
Title: _____

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-B Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: _____
Name: _____
Title: _____

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010,
by _____ of Riverbanks Renaissance Phase I-A Equity,
LLC, the Managing Member of Riverbanks Renaissance Phase I-A Joint Venture, LLC, the sole
Member of Riverbanks Renaissance Phase I-A Mezzanine, the sole Member of Riverbanks
Renaissance Phase I-A Owner, LLC, a Delaware limited liability company, on behalf of the
company.

Notary Public

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010,
by _____ of Riverbanks Renaissance Phase I-B Equity,
LLC, the Managing Member of Riverbanks Renaissance Phase I-B Joint Venture, LLC, the sole
Member of Riverbanks Renaissance Phase I-B Mezzanine, the sole Member of Riverbanks
Renaissance Phase I-B Owner, LLC, a Delaware limited liability company, on behalf of the
company.

Notary Public

This instrument was prepared by: R. Bailey Teague, Jr.
Kipatrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309

19

132008-00210 1

EXHIBITS

EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D
EXHIBIT E

Legal Description of Lot 16B-1A
Legal Description of Lot 16B-1B
Site Plan depicting Lot 16B-1A and Lot 16B-1B
Site Plan depicting Phase 1A Easements - Access Drives and Ramps,
Service Drives
Site Plan depicting Phase 1B Easements - Access Drive, Service Drives

20

132008-00210 2

EXHIBIT B
Legal Description of Lot 16B-1B

Lot 16B-1B:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Freedom Way (a 70' right-of-way) and to the north line of said Lot 16B of The Banks Phase IV, said point being North 80°22'31" East, 326.58 feet from the northwest corner of Lot 16B and also from the intersection of said south line of Freedom Way with the east line of Walnut Street (a 70' right-of-way); thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 68.17 feet to the intersection of said south line of Freedom Way with the west line of Main Street (a 70' right-of-way); said point also being the northeast corner of said Lot 16B; thence along said lines of Main Street and Lot 16B, South 93°37'29" East, 242.00 feet to the southeast corner of said Lot 16B; thence along southerly lines of said Lot 16B the following three (3) courses and distances: South 80°22'31" West, 72.75 feet to a point; South 93°37'29" East, 8.00 feet to a point; and South 80°22'31" West, 235.33 feet to a point; thence North 93°37'29" West, 90.00 feet to a point; thence North 80°22'31" East, 239.92 feet to a point; thence North 93°37'29" West, 160.00 feet to the **POINT OF BEGINNING**; said tract of land containing 0.8735 acres of land above an elevation of 510 feet.

This above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

CGS08 WEST 1

EXHIBIT A
Legal Description of Lot 16B-1A

Lot 16B-1A:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the south line of Freedom Way (a 70' right-of-way) with the east line of Walnut Street (a 70' right-of-way); said point also being the northwest corner of Lot 16B; thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 326.58 feet to a point; thence South 93°37'29" East, 160.00 feet to a point; thence South 80°22'31" West, 239.92 feet to a point; thence South 93°37'29" East, 90.00 feet to a point in a south line of aforesaid Lot 16B; thence along southerly lines of said Lot 16B the following five (5) courses and distances: South 80°22'31" West, 5.67 feet to a point; North 93°37'29" West, 8.00 feet to a point; South 80°22'31" West, 50.00 feet to a point; North 93°37'29" West, 15.00 feet to a point; and South 80°22'31" West, 31.00 feet to a point in the aforesaid east line of Walnut Street; said point also being the southwest corner of said Lot 16B; thence along said line of Walnut Street and the west line of said Lot 16B, North 93°37'29" West, 227.00 feet to the **POINT OF BEGINNING**; said tract of land containing 1.3531 acres of land above an elevation of 510 feet.

This above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

CGS08 WEST 5

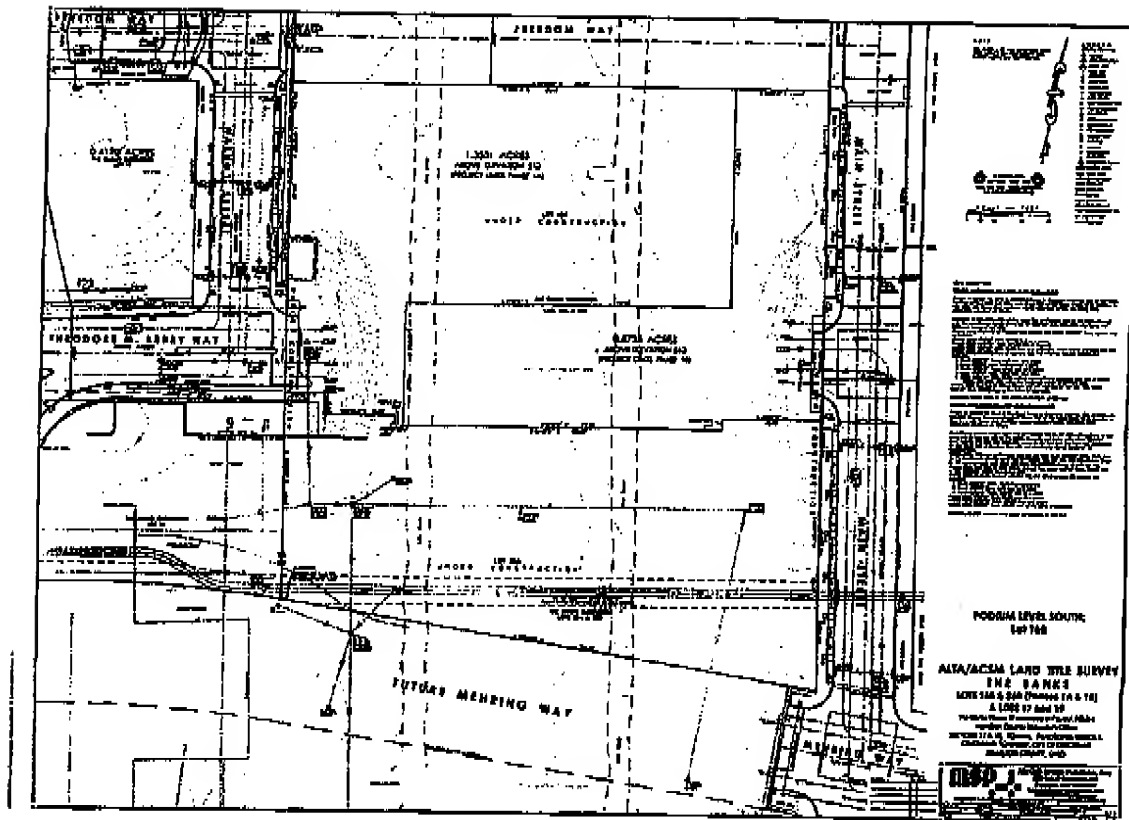


EXHIBIT C

Site Plan depicting Lot 16B-1A and 1.01 16B-1B

See attached.

EXHIBIT C

EXHIBIT D

Site Plan depicting Phase 1A Easements

See attached.
(To Come)

EXHIBIT E

Site Plan depicting Phase 1A Easements

See attached.
(To Come)

EXHIBIT D

EXHIBIT E

EXHIBIT "O"
General Declaration

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
THE BANKS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS FOR THE BANKS is made this ____ day of December, 2010, by and among RIVERBANKS RENAISSANCE, LLC, a Delaware limited liability company ("Declarant"), RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-A Owner"), and RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase I-B Owner").

Background Statement

A. Declarant, The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio (the "County"), and The City of Cincinnati, Ohio (the "City") are parties to a Master Development Agreement dated November 23, 2007, as amended by a First Amendment of Master Development Agreement dated January 22, 2008, a Second Amendment of Master Development Agreement dated February 29, 2008, and a Third Amendment of Master Development Agreement dated May 23, 2008 (as so amended, and as the same may hereafter be amended from time to time, the "Master Development Agreement"), pursuant to which, among other things, the County and the City have designated Master Developer as master developer for a mixed use project (the "The Banks") covering certain parcels and lots of land as generally shown on the Master Development Plan attached hereto as **Exhibit "A"**.

B. Declarant desires to provide for the separate ownership of portions of the Property and in connection therewith, Declarant desires to subject and impose upon the Property certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens as set forth in this Declaration for the purpose of insuring the proper use and appropriate development, maintenance and improvement of the Property.

C. Phase I-A Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described as Lot 16B-1A, Lot 26B-1A, Lot 17 and Lot 19 as **Exhibit "B"** attached hereto (the "Phase I-A Lots").

D. Phase I-B Owner owns the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described as Lot 16B-1B and Lot 26B-1B on **Exhibit "C"** attached hereto (the "Phase I-B Lots").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property and

132004 06/06/11

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS**

FOR

THE BANKS

City of Cincinnati, Hamilton County, Ohio

December __, 2010

132004 06/06/11

any fee simple, leasehold or other interest therein is and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated, encumbered, leased, subleased, rented, used, occupied, developed, improved and maintained subject to the terms, provisions, covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens set forth in this Declaration.

ARTICLE I DEFINITIONS AND PURPOSES

1.1. **Definitions** In addition to terms defined elsewhere in this Declaration, the following words, when used in this Declaration, shall have the following meanings (such meanings to be applicable to both the singular and plural forms of the terms defined):

"Adequate Capacity" means, as to any Utility Facilities to which an Owner proposes to connect to, tap into or tie onto to serve a Lot, that there is adequate available capacity within such Utility Facilities to serve such Lot.

"Approval," "Approved" or "Approved" means an express prior approval in a written statement signed by the approving person.

"Assessable Lot" means each Lot, or subdivided portion thereof, from and after the completion of construction of improvements on such Lot, or portion thereof, as evidenced by the issuance of a certificate of occupancy (either temporary or permanent) for such improvements.

"Assessment Allocation" means the number allocated to each Lot within The Banks, which, with respect to each Lot, equals the number of ADUs assigned to such Lot.

"Assessment Density Unit" or "ADU" means a unit of measure for purposes of allocation of Assessments for certain Common Expenses among the space within the various Lots within The Banks. Assessment Density Units shall be allocated to the following types of space as follows:

- (i) retail (including accessory retail space located in Improvements designed primarily for office use, residential use or hotel use) - ten (10) per 1,000 square feet of Rentable Space;
- (ii) office - two (2) per 1,000 square feet of Rentable Space;
- (iii) residential (apartment, condominium, cooperative and other) - one and one-half (1.5) per residential unit; and
- (iv) hotel - one(1) per hotel room.

"Assessment Ratio" of a Lot, from time to time, means a fraction, expressed as a percentage, the numerator of which is the Assessment Allocation for such Lot, and the denominator of which is the Total Assessment Allocation for all Lots, from time to time, within The Banks.

"Assessments" means the amounts payable by an Owner under this Declaration in accordance with Section 6.2 hereof.

"Attached hereto" means and has reference to the following: Attached hereto and for all purposes incorporated herein by reference.

"Building" means, but is not limited to, both the main portion of a structure built for permanent use on a Lot, and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, carports, canopies, enclosed walk, and porches.

"Business Day" means any Day excluding any Saturday, any Sunday, and any national holiday observed by the United States Government.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time, or any corresponding provisions of succeeding law.

"Common Area" means all portions of the Property located outside the exterior edge of the exterior walls of the Buildings on the Property, as such areas may be designated and modified from time to time pursuant to the terms hereof. Title to any portion of the Common Areas may be vested in a Governmental Authority, a utility provider, Declarant or an Owner.

"Common Easement" means the easements in and to the Common Areas declared and established pursuant to Section 5.2 hereof.

"Common Expenses" means the expenses described in Section 6.2(e) hereof or otherwise specified as Common Expenses in this Declaration.

"Common Facilities" means: (i) all improvements constructed or installed from time to time in, on, over, under, through or across the Common Areas; and (ii) all Utility Facilities constructed or installed from time to time in, on, over, under, through or across the Common Areas.

"Day" means and has reference to any one calendar day, unless specifically noted to the contrary.

"Declarant" means RIVERBANKS RENAISSANCE, L.L.C., a Delaware limited liability company, and its successors and assigns, and shall include any assignee of the Declarant Interest pursuant to Section 9.1 hereof, and any successor to the Declarant Interest pursuant to Section 9.1 hereof.

"Declarant Interest" means the Declarant Powers, together with all of the right, title, interest, privileges, benefits and options of the "Declarant" under this Declaration.

"Declarant Obligations" means all of the duties, obligations, liabilities and responsibilities of the "Declarant" under this Declaration.

"Declarant Powers" means all of the rights, reservations, power and authority of the Declarant pursuant to this Declaration.

"Declaration" means this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for The Banks as the same shall be supplemented or amended from time to time as provided herein and references to this Declaration mean and include each of the terms and provisions hereof, and each of the covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens set forth herein.

"Design Criteria" means the criteria for the design of improvements within the Property, set forth in, or promulgated in accordance with, Sections 4.3 and 4.4 hereof.

"Fiscal Year" means the calendar year.

"Foreclosure" means, without limitation: (i) the judicial foreclosure of a Mortgage; (ii) the exercise of a power of sale contained in any Mortgage; (iii) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; or (iv) any action commenced or taken by a lender to regain possession or control of property leased under a sale/leaseback.

"Governmental Authority" means the United States of America, the State of Ohio, Hamilton County, Ohio, the City of Cincinnati, Ohio, and any agency, authority, court, department, commission, board, bureau or instrumentality of any of them.

"Governmental Regulations" means any constitution, statute, ordinance, code, regulation, resolution, rule, requirement or directive, and any decision, judgment, writ, injunction, order, decree or demand of court, administrative body or other authority constraining any of the foregoing, including, without limitation, zoning ordinances, regulations and conditions.

"Hazardous Substances" means any substance identified in Section 101(14) of CERCLA or petroleum (including crude oil or any fraction thereof).

"Herein", "hereunder", "hereto", "hereby", "hereto", "hereof" and any similar term means and refers to this Declaration as a whole.

"Improvement" means, with respect to any Lot or the Common Area, any Building, structure or other improvement of any kind or nature whatsoever in, on, over, under, through or across such Lot or Common Area, whether permanent or temporary, stationary or moveable, on above, on or below ground level, including, without limitation, all land preparation or excavation, landscaping, buildings (whether fully or partially enclosed), parking structures, building areas, paving, site improvements, trackage, fences, walls, exterior screening, poles, towers, antennas, aerials, lighting, driveways, ponds, lakes, fountains, decks, benches and other exterior furniture, walkways, jogging paths, Utility Facilities, signs, exterior communications equipment and facilities, and any construction, alteration or other activity that affects the exterior color or appearance of any Building or other structure.

"Including" means "including without limitation."

"Joiner Agreement" has the meaning given in Section 1.6.

"Lot" means each Lot within The Banks from and after the initial conveyance of such Lot by the City of Cincinnati, Ohio or Hamilton County, Ohio, to a Person that is either (i) an affiliate with Declarant; or (ii) approved by Declarant as a non-affiliate owner in accordance with the Master Development Agreement.

"Maintenance and Operational Activity" means any activity or function that takes place on an ongoing basis or intermittently for the purpose of maintaining or operating any improvement during construction, renovation or installation of the improvement or after such construction, renovation or installation has been completed or substantially completed.

"Master Development Plan" means the Master Development Plan attached hereto as Exhibit "A".

"Mortgage" means any encumbrance of any portion of the Property as security for any indebtedness or other obligation of an Owner or its successors and assigns, whether by mortgage, deed of trust, sale/leaseback, pledge, financing statement, security agreement, or other security instrument; provided, however, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purposes of this Declaration.

"Mortgages" means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or the heirs, legal representatives, successors, transferees and assigns of such initial holder.

"**Mortgagee**" means the Owner of the property or property interest conveyed or encumbered by any Mortgage.

"**Occupant**" means, as the context requires, an Owner, a Space Tenant, or any other lawful user or occupier of any portion of the Property or any Improvements, including, without limitation, agents, employees, customers, invitees and licensees.

"**Owner**" means, with respect to any portion of the Property, the owner of the fee simple interest in such portion of the Property. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed an Owner with respect to the portion of the Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagor from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

(b) a tenant or lessee of space in the Property shall not be deemed an Owner;

(c) if any portion of the Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Owner with respect to such portion of the Property;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Property shall not be deemed the Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event an Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such Persons shall, within 30 days after the date of their acquisition of any portion of the Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Owner as their designated agent to receive all notices and demands to be given to such Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by such Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Owner for the purposes of exercising any rights of such Owner under this Declaration. Such Persons comprising an Owner may change their designated agent by written notice to the Parties, but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising such

Owner appointing and authorizing one of such Persons comprising such Owner to act as attorney-in-fact pursuant to such power of attorney.

"**Person**" means an individual, partnership, joint venture, cotenancy, association, corporation, limited liability company, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

"**Prime Rate**" means the prime rate published in the "Money Rates" section of the Wall Street Journal from time to time.

"**Property**" means all Lots; and such term includes, as the context requires, all Improvements from time to time located on the Property.

"**Release**" shall have the meaning given to such term in Section 101(22) of CERCLA.

"**Rentable Space**" means: (a) in respect of Improvements for office use, the "Building Rentable Area" thereof, or of a portion thereof, as calculated in accordance with the *Standard Method for Measuring Floor Area in Office Buildings*, published by Secretariat, Building Owners and Managers Association International (ANSI/BOMA 265.1-1996), revised and recast June 7, 1996; and (b) in respect of Improvements for retail use, the "Gross Leasable Area" thereof, or of a portion thereof, as calculated in accordance with *Carpenter's Shopping Center Management Principles and Practices, Third Edition* (New York, New York: International Council of Shopping Centers, p. 1, 1984), defining "Gross Leasable Area" as the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, all as measured from the center line of joint partitions and from outside wall faces.

"**Space Lease**" means any tenancy, leasing, sub-tenancy, sub-leasing, concession, rental, occupancy or other possessory or space use agreement entered into by an Owner, and providing for the use, occupancy and enjoyment of space within a Building or any other portion of a Lot or the Improvements thereon. A Space Lease shall not convey an interest in real property.

"**Space Tenant**" means the tenant under a Space Lease.

"**Taxes and Assessments**" means any and all of the following: (i) real property ad valorem taxes and assessments; (ii) charges made by any public or quasi-public authority for improvements or betterments; (iii) sanitary taxes or charges, sewer or water taxes or charges; and (iv) any other governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever, whether general or special, whether ordinary or extraordinary, whether foreseen or unforeseen and whether or not payable in installments.

"Total Assessment Allocation" for the Property means the sum, as of any date, of all Assessment Allocations allocated to all Assessable Lots to the Property. The Total Assessment Allocation for the Property will increase, from time to time, based upon the improvements from time to time constructed on the Property.

"Utility Facilities" means all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity and light, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities or services, including, without limitation, publicly owned fire and police signal systems, which directly or indirectly serve the Property or any part thereof.

All terms used in this Declaration with an initial capital letter which are not defined in this Section 1.1 shall have the meanings ascribed to them elsewhere in this Declaration.

1.2 Exhibits. The following Exhibits are attached to, and incorporated in, this Declaration:

Exhibit "A"	-	Master Development Plan
Exhibit "B"	-	Phase I-A Lots
Exhibit "C"	-	Phase I-B Lots
Exhibit "D"	-	Form of Joinder Agreement

1.3 Purpose. The purpose of this Declaration is to ensure the proper use and appropriate development and improvement of the Property so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of the Property and all parts thereof; to ensure the orderly and attractive development and use of the Property; to prevent the erection on the Property of any improvements built of improper or unsuitable design and/or materials; to prevent any haphazard and inharmonious improvement of Lots; to protect Owners against such improper use of surrounding Lots as will depreciate the value of their Lots; to encourage the erection of attractive improvements; to provide for the orderly and effective maintenance of the Property; to provide for the construction, installation, and maintenance of Common Facilities; and in general to preserve the architectural integrity, aesthetic appearance, and economic value of the Property and improvements constructed hereon from time to time.

1.4 Run With the Land. This Declaration and all of the provisions hereof are and shall be real covenants running with the Property and shall burden and bind the Property for the duration hereof. To that end, this Declaration shall be deemed incorporated in all deeds and conveyances hereafter made by Declarant and/or any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration, and in accepting such interest or estate in, or a security

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interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration and all of the terms and provisions hereof, whether or not such Person shall have executed any document or instrument evidencing the same.

1.5 Establishment of Additional Covenants. Declarant shall have the right and power at any time and from time to time, unilaterally and at its sole discretion, to create, declare and establish additional covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens, in addition to this Declaration ("Additional Covenants"), for any portion of the Property with respect to which Declarant is the Owner. Declarant shall establish such Additional Covenants by filing a supplemental declaration in the public real estate records in Hamilton County, Ohio. No Additional Covenants shall affect a Lot with respect to which Declarant is not the Owner at the time of such filing unless the Owner thereof joins therein.

1.6 Joinder. Upon the conveyance of any Lot by the County or City to an Owner, Declarant and such Owner shall enter into a Joinder Agreement (a "Joinder Agreement") in the form of Exhibit "D" hereto. Pursuant to each Joinder Agreement, the subject Lot and Owner shall become subject to, and entitled to the benefit of, this Declaration with respect to the subject Lot.

1.7 Submittal to Declaration. The Phase I-A Owner and the Phase I-B Owner join in the execution of this Declaration for the purpose of submitting the Phase I-A Lots and the Phase I-B Lots to the terms, obligations and benefits of this Declaration.

ARTICLE II MASTER DEVELOPMENT PLAN

2.1 Master Development Plan. The Master Development Plan designates future Lots within The Banks and the use for each such future Lot and shall govern the location, mix, type, intensity, quality and density of uses in The Banks and the nature and location of desired infrastructure improvements such as pedestrian ways, transit ways, streets and open space in The Banks, and may govern, where appropriate, the timing of such development.

2.2 Amendments to the Master Development Plan. From time to time, at any time and in its sole discretion, Declarant may amend the Master Development Plan in any manner consistent with the statement of purpose set forth in Article I of this Declaration, including any amendments which: (i) designate additional Lots; or (ii) add to, subtract from or change the boundaries of any Common Areas.

ARTICLE III CONTROL AND LAND USE

3.1 Restrictions. To further the purpose of this Declaration as set forth in Article I hereof, the Property shall be subject to the following restrictions:

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(a) Improvements on Lots. No Improvements shall be made on any parcel of land that is part of the Property unless Declarant has designated and approved that parcel as a Lot.

(b) Plan Approval. Declarant shall have the sole right, power and authority to approve and regulate the design and construction of all Improvements within the Property so as to secure compliance with the intent and purpose of this Declaration, including, without limitation, for the purpose of the overall aesthetic coordination of the Property. No Improvement shall be made, constructed, erected, placed, modified, altered (by addition or deletion), demolished, rebuilt or reconstructed, maintained or permitted to remain on any Lot unless and until the plans and specifications for such Improvement have been submitted to, and Approved by, Declarant pursuant to the provisions of this Declaration, and except in accordance with plans and specifications submitted to, and Approved by, Declarant pursuant to the provisions of this Declaration; provided, however, that alterations or remodeling, which (i) take place completely within a Building, (ii) do not change the exterior appearance in any material respect of such Building, or alter the structural integrity of such Building, (iii) are not visible from the outside of the Building, (iv) do not increase the occupancy of the Building in any material respect beyond its therefore intended capacity, and (v) do not create a demand for extraordinary services or utilities, may be undertaken without the Approval of Declarant. For purposes of clause (ii) of this Subsection 3.1(b), and only by way of example and not in limitation thereof, any change in the color or construction materials of the exterior of a Building shall be deemed "material".

(c) No Subdivision. No Lot shall be split, divided or subdivided, nor shall the size, dimensions or boundaries of any Lot be otherwise changed or altered, without the Approval of Declarant.

(d) Changes in Zoning. Without the Approval of Declarant, no Owner or Occupant shall file with any Governmental Authority having jurisdiction over the Property or any part thereof any application or petition for zoning, rezoning, special use permit, or zoning variance, any subdivision plan, plat or application, any request for annexation, or any similar filing affecting the use of any portion of the Property.

(e) Hazardous Substances. Without the Approval of Declarant, no Owner, Occupant or other Person acting at the direction of or with the consent of an Owner or in, above or under the Property, or any part thereof, shall manufacture, treat, use, store or dispose of any Hazardous Substance on, in, above or under the Property, or any part thereof. No Owner, Occupant or other Person acting at the direction of or with the consent of an Owner or Occupant shall permit the Release of a Hazardous Substance on, from, in, above or under the Property or any part thereof so as to create an imminent and substantial endangerment to health, welfare or the environment.

3.2 Quality of Development.

(a) Loading and Unloading. Loading and unloading of merchandise, supplies or other property, and parking or stacking of trucks, trailers or other vehicles or equipment engaged in such loading or unloading, shall be permitted only within the service areas designed for such activities.

(b) Maintenance. Each Owner and Occupant of the Property shall be responsible for keeping its Lot in a safe, clean, neat, orderly and first class condition and shall prevent rubbish from accumulating on its Lot, and shall prevent any rubbish on its Lot from being blown or carried by the wind or otherwise transported onto the surrounding Common Areas. Landscaping of a Lot shall be maintained in a neat, orderly and first class manner. Each Owner shall perform all maintenance, repair and replacements on its Lot. Each Owner shall not keep, replace, maintain and repair its Lot so that at all times such Lot shall be in good order and repair, and in a good, safe and substantial condition; including, but not limited to, painting and repainting Improvements, seeding, watering, and mowing lawns, planting, pruning, and cutting trees and shrubbery, and other appropriate external care of all landscaping and Improvements, all in a manner consistent with property management in first class developments in Cincinnati, Ohio. No Owner shall cause or permit any waste or deterioration to its Lot. An Owner's obligations hereunder shall include, without limitation, the obligation to maintain, repair, restore, renew and replace the roofs and foundations of the Improvements and to make all needed restorations, renewals and repairs to, or replacements of, the Improvements, whether interior or exterior, whether structural or non-structural, whether foreseen or unforeseen, and whether ordinary or extraordinary. Each Owner shall make diligent efforts to prevent, and shall promptly correct, any unclean or unsightly conditions or Improvements on its Lot.

(i) During any periods of construction, renovation or demolition of any Improvements on a Lot, the Owner of such Lot shall comply with any standards or guidelines adopted by Declarant for construction site practices and maintenance. Furthermore, if in the course of any construction, renovation or demolition activity, including, but not limited to, activity to establish a utility hook-up in a Lot, any existing utility lines, streets, curbs or other Improvements are damaged in any way, the Owner conducting such construction or demolition shall restore or repair such lines, streets, curbs or other Improvements to a condition at least as good as existed prior to the damage, and shall pay any cost or expenses, including attorneys' fees, incurred by any Person other than such Owner arising from or as a result of such damage.

(ii) Declarant may determine that any Maintenance and Operational Activity either causes or results in a violation of or is inconsistent with the purpose and intent of this Declaration, and thereafter require the Person or Persons so engaging in or permitting such activity to cease or to correct the activity under conditions that are violative of or inconsistent herewith.

(c) Declarant Authority as to Maintenance and Repair. The authority of Declarant to enter upon a Lot and cure violations or breaches of this Declaration pursuant to Section 8.6 hereof shall specifically include, without limitation, the authority to enter and cure any failure to perform the maintenance and repair obligations set forth in Subsection 3.2(b).

3.3 Insurance.

(a) Owner's Insurance. Each Owner shall maintain, or cause to be maintained, the insurance coverages provided for below in this Section 3.3:

(i) General Liability. Each Owner shall maintain, or cause to be maintained, commercial general liability insurance with respect to its Lot operations, including insurance for claims arising from contractual liability, with annual limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, subject to adjustment as provided in Section 3.3(b). Each Owner's obligations with respect to commercial general liability insurance may be satisfied by the inclusion of its Lot within the coverage of a "blanket" policy of insurance provided that the limit of liability shall apply on a "per location" basis to its Lot and shall not be defeated by losses paid for any other location covered under the policy.

(ii) Builder's Risk. At all times during the construction of its Improvements, each Owner shall maintain, or cause to be maintained, all risk builder's risk insurance, with earthquake coverage, for the full replacement value thereof (subject to a commercially reasonable sublimit for earthquake coverage).

(iii) Property. At all times after completion of construction of any of its Improvements, each Owner shall maintain, or cause to be maintained, insurance coverage at least as broad as ISO Special Form Coverage insuring against risks of direct physical loss or damage (commonly known as "all risk"), written at full replacement cost value, with agreed value endorsement, for such portion of its Improvements. An Owner's obligations with respect to property insurance may be satisfied by the inclusion of its Lot within the coverage of a "blanket" policy of insurance provided that the policy specify such Lot. An Owner shall be permitted to insure under policies that include deductibles to a limit not exceeding \$50,000.

(iv) Contractor's Liability. At all times during the construction of any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (b) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (c) worker's compensation insurance in the statutory amount, and (d) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000

policy limit on diseases (all such minimum limits being subject to adjustment as provided in Section 3.3(b)).

(v) Umbrella/Excess Liability. At all times during the construction of or any of its Improvements, each Owner shall maintain, or cause each contractor performing work thereon to maintain, umbrella and excess liability insurance with a minimum limit of \$3,000,000 for all insurance specified in Section 3.3(iv), except worker's compensation insurance.

(vi) Professional Liability. At all times during the design and construction of any of its Improvements, each Owner shall maintain, or cause its outside architects and engineers performing the design work for such improvements to maintain, architects' and engineers' professional liability insurance, on a claims-made basis, with a minimum limit of \$2,000,000 per claim and in the aggregate, subject to adjustment as provided in Section 3.3(b).

(vii) General Requirements. All insurance policies required to be maintained pursuant to the above provisions of this Section 3.3 shall be issued by insurance companies rated A VII or better by the current Best's Key Rating Guide or the equivalent in subsequent editions and authorized to do business in the State of Ohio. All such insurance policies shall: (a) where appropriate, name the other Owner(s) and their employees and agents and, at the request of the other Owner's, their Mortgagees as additional insureds; (b) stipulate where appropriate that such insurance is primary and is not additional to any insurance carried by the other Owner(s); (c) if appropriate, contain a waiver of subrogation provision as contemplated by Section 3.3(c); (d) contain within the policy or by endorsement a cross liability or severability of interest clause; and (e) provide that the insurance may not be canceled without at least 30 days prior notice to the other Owners. At the request of each Owner from time to time, an Owner will furnish to each Owner certificates of insurance evidencing the required insurance coverages. Any claims-made policy will include a tail of at least two years or evidence that the coverage remained in effect at least two years after completion of the matter which is the subject of the policy.

(b) Adjustment of Minimum Limits. The minimum limits for the various insurance coverages provided for in Section 3.3(a) are subject to adjustment to a higher amount as Declarant may reasonably require from time to time, taking into account amounts commonly carried with respect to comparable properties in the Cincinnati metropolitan area.

(c) Waiver of Subrogation. To the extent permitted by law, each Owner waives and releases the others from any and all liability for any loss or damage caused by fire, any of the extended coverage casualties, or other casualties insured against or required to be insured against (including by self-insurance), even if such fire or other casualty shall be brought about by the fault or negligence of the party benefited by the release or its agents. Each Owner shall have its insurance policies issued in such form as to waive any right of subrogation as might otherwise exist.

(d) Evidence of Insurance. Each Owner shall give reasonable satisfactory evidence of insurance to Declarant upon: (i) acquisition of its Lot; (ii) such renewal of its insurance policies; and (iii) reasonable request of Declarant. The certificate shall specify amounts, types of coverage, the waiver of subrogation, and the insurance criteria listed in subsection 3.3(vii) hereof. The policies shall be renewed or replaced and maintained by the Owner responsible for that policy. If an Owner fails to give the required evidence of insurance within thirty (30) Days after notice of demand therefor, Declarant may obtain and pay for that insurance and receive reimbursement from the Owner required to have the insurance.

3.4 Casualty. In the event of the damage to or destruction of the Improvements on any Lot by fire, other casualty or sudden destructive event, the Owner of such Lot shall either: (i) repair, restore and rebuild such Improvements to substantially their condition immediately prior to such event; (ii) repair and restore the undamaged portion of such Improvements to a complete architectural unit; or (iii) raze such Improvements, in which event the surface of the Lot shall either be left with the slab of the pre-existing Building in place in good condition and repair, or the slab demolished and the surface repaved. All repair, restoration and rebuilding pursuant to this Section 3.4 shall be subject to all of the terms and provisions of this Declaration, including, without limitation, Section 4.1 hereof and the plans for any such repair, restoration and rebuilding shall be submitted to Declarant within sixty (60) days of such event of damage to or destruction of the Improvements. If, after an event of damage to or destruction of the Improvements, an Owner elects to raze such Improvements, such razing shall be completed within ninety (90) days of such event of damage to or destruction of the Improvements.

3.5 Adjustment of Rentable Space. For purposes of calculation of a Lot's Assessment Allocation, the Rentable Space of the Building(s) located on such Lot shall be adjusted after any alteration, rebuilding, repaving, replacement or reconstruction of such Building(s) or construction of a new Building on such Lot. During any period of alteration, rebuilding, repaving, replacement or reconstruction of a Building, and after damage to or destruction of a Building and irrespective of whether such Building is rebuilt, repaired, replaced or reconstructed, the Rentable Space attributable to such Building shall be deemed to be the same as related immediately prior thereto. Immediately upon the completion of construction of a new Building, or the completion of any rebuilding, repaving, replacement or reconstruction of a Building, the Owner upon whose Lot such Building is located shall cause a determination of a Rentable Space of such Building to be made and shall deliver the results of such determination to Declarant.

ARTICLE IV APPROVAL OF PLANS

4.1 Approval Required. Declarant shall have the sole right, power and authority to Approve and regulate the design and construction of all Improvements within the Property so as to assure compliance with the intent and purpose of this Declaration, including,

14

SECTION 4.01 (1)

without limitation, for the purpose of the overall aesthetic coordination of the Property. Subject to the provisions of Subsection 3.1(b) hereof, no Improvement shall be made, constructed, erected, placed, modified, altered (by addition or deletion), demolished, rebuilt or reconstructed, maintained or permitted to remain on any Lot unless and until the plans and specifications for such Improvement have been submitted to, and Approved by, Declarant, and except in accordance with plans and specifications submitted to, and Approved by, Declarant, Declarant shall have the sole discretion to determine whether plans and specifications submitted for its Approval are acceptable to Declarant, and Declarant shall be entitled and empowered, in accordance with the provisions of Article VIII hereof, to enjoin or remove any Improvement undertaken pursuant to plans and specifications that have not been Approved by Declarant, if such Approval is required by Article III hereof. Any Approval or disapproval by Declarant of any plans and specifications for Improvements shall be made in Declarant's sole judgment and discretion and shall be final, conclusive and binding. Declarant shall have the right to employ professional consultants to assist it in exercising its power and authority under this Article IV.

4.2 Declarant Action. Declarant shall act promptly to review and either Approve or disapprove any plans and specifications submitted to it.

(a) If Declarant disapproves any submission made by any Person, Declarant, on the request of such Person, shall provide a written statement of the reasons for rejection, shall suggest revisions that meet Declarant's requirements, and shall otherwise make reasonable efforts (at no cost to Declarant) to aid the submitting Person in preparing a proposal that would be acceptable to Declarant. If any costs are incurred by Declarant in connection with such efforts, the payment of such costs by the submitting Person shall be a condition precedent to final Approval.

(b) Any subsequent re-submission by any Person shall be reviewed and acted upon by Declarant promptly.

(c) Without limiting the generality of Declarant's discretion to Approve or disapprove plans and specifications, Declarant may disapprove any plans and specifications submitted hereunder for any one or more of the following reasons, or other reasons as Declarant may specify:

- (i) Failure of the plans and specifications or the submitting Person to comply with any of the Design Criteria set forth in Section 4.3 hereof, or any other design or development standards from time to time established by Declarant;
- (ii) Failure by the submitting Person to include in the plans and specifications such information as may have been reasonably requested by Declarant;

15

SECTION 4.02 (1)

(a) Integrated Complex. The Property is intended to be developed and used as an integrated mixed-use development.

(b) Materials. Materials used in Improvements in or on the Property shall be of high quality and shall be durable so as to result in appreciation in value of the Improvements over time.

(c) Governmental Requirements. Any Improvement, including electrical, plumbing and mechanical systems, shall be of an appropriate type of construction or installation as defined in applicable Governmental Requirements.

(4) Exterior Materials, Colors. Finish building materials shall be applied to all sides of a Building which are visible to the general public, as well as from neighboring Lots, Common Areas, and public streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings. Declarant shall have the sole right to Approve or disapprove materials and color schemes. After its Approval of a color scheme, Declarant may require a change in such Approved color scheme if, after the installation thereof, Declarant should determine such color scheme to be inharmonious or incompatible with its surroundings.

(e) Signs. Signs shall be designed, erected, altered, reconstructed, moved and maintained, in whole or in part, in accordance with the sign criteria from time to time promulgated by Declarant and plans and specifications Approved by Declarant. If Declarant modifies the sign criteria for the Property, the signs located on each Lot shall be brought into conformance with the modified sign criteria.

(f) Utilities, Mechanical Equipment, and Roof Projections. All mechanical equipment, utility meters, and storage tanks shall be located in such a manner as not to be visible to the general public from the Lots, Common Areas (except for service drives), or public streets. If concealment within the Building is not possible, then such utility elements shall be concealed by screening. Antennae, satellite dishes, and other communications devices shall be visually masked to the extent practicable and consistent with appropriate electromagnetic considerations.

(g) Perimeters and mechanical equipment screen walls shall be of a design and materials similar to and compatible with those of the Building.

(h) Underground utility lines shall be used unless exception is made by Declarant. No transformer, electric, gas, water, or other meter of any type or other apparatus shall be located on any power pole or hung on the outside of any Building, but same may be placed on or below the surface, and where so placed, shall be adequately screened from view (except if located in service area where no screening is required).

17

LEADEN PAGE 1

(iii) objection by Declarant to the exterior design, color scheme, finish, proportions, style or architecture, height, appearance, or quality of materials of any proposed Improvement;

(iv) incompatibility of any proposed Improvement with any existing Improvements upon other Lots;

(v) objection by Declarant to the location of any proposed Improvement upon any Lot or with reference to other Lots;

(vi) objection by Declarant to parking areas proposed for any Lot because of the inefficiency or location of the parking areas or the visibility of such parking areas from any Common Areas;

(vii) objection by Declarant to the height or density of proposed Improvements or to the ratio of parking spaces on the Lot to gross square footage of floor area in the Improvements or to the size of such parking space; or

(viii) failure of the plans and specifications or the subdividing Person to comply with any applicable Governmental Requirements affecting development of the subject Building or Lot, or any other restrictions limiting the percentage of the Lot which may be covered by the Building or parking areas.

(4) Approval of any plans and specifications with regard to a Lot (i) shall not be deemed a waiver of Declarant's right, in its discretion, to disapprove similar plans and specifications, or any of the features or elements included therein, submitted for any other Lot; and (ii) shall be final as to the Lot for which they have been submitted, provided that the Improvements on such Lot are constructed and maintained in substantial conformity with the Approved plans and specifications.

(e) Under no circumstances shall a Person submit its plans and specifications to the Governmental Authority having jurisdiction for review and approval unless and until it shall have received Declarant's Approval of such plans and specifications.

(f) Declarant may require payment of reasonable fees by Persons requesting Approval of plans and specifications for Improvements and by Owners whose property is inspected pursuant to Section 4.7 hereof, said payment to be used to cover costs of Declarant and compensation of its consultants.

4.3 Design Criteria. The following criteria, together with any other criteria adopted by Declarant in accordance with Section 4.4 hereof, shall be used by Declarant to determine the suitability of all proposed Improvements in or on the Property.

16

LEADEN PAGE 2

(ii) Large items such as air conditioning, ventilating, or other mechanical equipment shall be screened or enclosed in such manner as to mask such equipment.

(g) Exterior Lighting. All exterior lighting shall be designed, erected, altered, and maintained in accordance with plans and specifications Approved by Declarant, to the end that lighting shall be compatible and harmonious throughout the Property.

4.4 Additional Design Criteria. Declarant shall have the right, power and authority, in its sole judgment and discretion, to amend, modify, supplement and replace the Design Criteria set forth in Section 4.3 hereof in a manner that is not materially inconsistent with the Design Criteria set forth in this Article IV and that implements the statement of purpose set forth in Article I hereof; provided, however, that no such amendment, modification, supplement or replacement of the Design Criteria shall apply to plans and specifications for improvements previously Approved by Declarant or operate to revoke any Approval previously given by Declarant with respect to plans and specifications for Improvements.

4.5 Waivers and Variances. It is the intent of this Declaration that the Design Criteria be strictly adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis, necessitate the waiving or varying of certain of the Design Criteria. Accordingly, Declarant, in its sole discretion, may from time to time authorize waivers or variances from compliance with any of the Design Criteria set forth in, or promulgated in accordance with, this Declaration, when circumstances such as topography, natural obstructions, hardship, or aesthetic, environmental, or planning objectives or considerations may so warrant. If such a waiver or variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the waiver or variance was granted. Any waiver or variance, when granted by Declarant, shall be final and binding upon all Owners. The granting of a waiver or variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose, except as to the particular Lot, provision, and instance covered by the waiver or variance; nor shall the granting of a waiver or variance be deemed to set a precedent with respect to any subsequent requests for waivers or variances.

4.6 Failure of Declarant to Act. If Declarant fails to Approve or disapprove in writing any plans and specifications submitted to it in accordance with this Article IV within twenty (20) Business Days following such submission, such plans and specifications shall be deemed to have been disapproved.

4.7 Post-Approval Inspections. Following Approval of any plans and specifications by Declarant, representatives of Declarant, or its designers or permittees, shall have the right, during reasonable hours and without prior notice, to enter upon and inspect any Lot or Improvements then under construction thereon to determine whether the plans and specifications therefor have been Approved by Declarant and whether development and

construction is proceeding substantially in accordance with such Approved plans and specifications. If Declarant shall determine that such plans and specifications have not been Approved or that plans and specifications which have been so Approved are not being complied with in every material respect, Declarant may in its discretion give the Owner or Occupant of such Lot and Improvements written notice to such effect, and, at any time thereafter, Declarant shall be entitled to enforce further construction until compliance and to require the removal or correction of any work in place that does not comply with Approved plans and specifications. If any Improvements shall be altered or replaced or maintained on any Lot otherwise than in substantial conformity with the Approved plans and specifications therefor, such action shall be deemed to have been undertaken without requisite Approval of Declarant and to be in violation of this Declaration, and Declarant shall be entitled to take action as permitted under this Declaration with respect thereto. A written statement executed by an architect Approved by Declarant for such purpose, which statement certifies the substantial conformity of the construction of the Improvements with the Approved plans and specifications therefor, shall constitute conclusive evidence of such conformity.

4.8 Time for Commencement of Construction After Approval. Upon receipt of Approval from Declarant, the Owner or Occupant to whom the Approval is given shall, as soon as practicable, satisfy any conditions thereof and diligently proceed with the commencement and completion of all Approved construction. Unless work on the Approved construction shall be commenced within six (6) months after the date of such Approval and thereafter continuously prosecuted to completion, the Approval shall be revoked automatically, unless Declarant has given written Approval for an extension of time for commencing work.

4.9 Inspection and Retention During Construction. During the period of construction of any improvement and until completion thereof, the Owner or Occupant performing such construction, or for whose benefit such construction is being performed, shall continuously employ an architect or professional engineer, licensed under the laws of the State of Ohio who shall periodically, but not less frequently than monthly, inspect such work to determine that the work is proceeding substantially in accordance with the Approved plans and specifications for such work. Such architect or engineer shall prepare on a periodic basis, but not less frequently than monthly, and deliver to such Owner or Occupant and Declarant a report of such inspection and the compliance or noncompliance, as the case may be, of such work. In addition, such architect or engineer shall represent such Owner or Occupant in all dealings and communications with Declarant during the period of construction.

4.10 Actions Binding. Actions of Declarant through its Approval or disapproval of plans, specifications, and other information submitted pursuant to the provisions of this Article IV shall be conclusive and binding on all parties.

4.11 No Liability. Neither Declarant nor any consultant to Declarant shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim therefor, arising out of or in any way connected with the performance or nonperformance of the Declarant's duties under this Article IV. In no event shall Declarant be liable or responsible for

damages or in any other manner whatsoever to any Owner or Occupant or to any other Person by reason of mistake of judgment, negligence or nonfeasance or any other reason whatsoever arising out of, by reason of, or in connection with Declarant's Approval, disapproval or deemed disapproval of, or reaction with respect to, any plans and specifications. Without limiting the generality of the foregoing, the construction of any Improvements on a Lot shall be the sole responsibility of the Owner of such Lot, and any requirements or recommendations made by Declarant or any consultant to Declarant, with respect to any plans or specifications or the means or methods of construction of any Improvements shall not alter the Owner's sole responsibility for the safe and proper design and construction of said Improvements, and shall not in any event impose liability or responsibility upon Declarant or any consultant to Declarant for any design or construction defects.

4.12 Rights of Third Parties. Approval by Declarant of any plans and specifications with regard to a Lot shall not constitute any judgment or opinion on the part of Declarant, as to the quality or soundness of the matters described in such plans and specifications or their fitness for any particular use or application. In particular, such Approval shall not be construed as a representation to third parties concerning the quality of the construction of any Improvements or the absence thereof of any defects.

4.13 Indemnity. Should Declarant be joined in any litigation as a result of or based upon any Approval of any plans and specifications, or any construction undertaken pursuant thereto, the Person or Persons who submitted such plans and specifications to Declarant for Approval shall, jointly and severally (if more than one), indemnify and hold harmless Declarant from and against any and all expenses, losses, or liabilities, including, without limitation, court costs and reasonable attorneys' fees, incurred by Declarant in connection with or as a result of such litigation.

ARTICLE V COMMON AREAS; EASEMENTS

5.1 Common Areas. The Common Areas, and the Common Facilities therein, shall be used and enjoyed, for their intended purposes, in common by Declarant and all Owners, subject to this Declaration and the rules and regulations established in accordance with this Declaration.

5.2 Common Easements. The Common Easements are as follows:

(a) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement, right and privilege for the benefit of Declarant and all Owners in, on, over, under, through or across the Common Areas for the use and enjoyment of the Common Areas, and the Common Facilities therein, for their intended purposes. Each Owner, so long as all Annual Assessments and Special Assessments due on its Lot have been paid, shall have the authority to allow use of the Common Areas, and the Common Facilities therein, for their intended purposes by their respective Occupants,

subject to this Declaration. The easements established, declared and reserved pursuant to this Subsection 5.2(a) shall include, without limitation, a nonexclusive, permanent, perpetual easement, right and privilege of pedestrian passage and use, on, over, and across all pedestrian walkways within the Property that are Common Areas.

(b) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement, right and privilege for the benefit of Declarant and all Owners to construct, install, operate, maintain, repair, and replace Utility Facilities within the Common Areas, and, subject to the availability of Adequate Capacity, to connect to, tap into or tie onto Utility Facilities within the Common Areas. The easements established, declared and reserved in this Subsection 5.2(b) shall include the right of ingress and egress to the Lots upon which the Utility Facilities are located to the extent reasonably necessary to permit the use and enjoyment of such easement.

(c) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement, right and privilege for the benefit of Declarant and all Owners in, on, over, under, through or across Common Areas and Lots along the common boundary lines of adjacent Common Areas and Lots for temporary access and temporary encroachments during construction, reconstruction or removal of any Improvements on such adjacent Common Areas or Lots, to the extent reasonably necessary to construct, reconstruct or renovate such Improvements.

(d) Notwithstanding the foregoing, certain Common Areas within a Lot may be designated as limited Common Areas for the sole benefit and use of the Owner and Occupants of such Lot. The amenities decks for Lot 16B-1A and Lot 26B-1A shall be limited Common Areas for the sole benefit and use of the Owner and Occupants of Lot 16B-1A and Lot 26B-1A.

5.3 Terms of Exercise of Common Easements. Declarant, each and every Owner and any other Person exercising their respective rights under the Common Easements agree to, with and for the benefit of Declarant and the other Owners as follows:

(a) Any and all construction, installation, repair, replacement, relocation and maintenance of Utility Facilities within any Common Area: (i) shall be done by, and at the sole cost and expense of, the Person so exercising its rights; (ii) shall be done only upon reasonable prior notice to the Owner of any Lot to be affected thereby; and (iii) shall be done in a manner so as to minimize any interruption and interference to the Owners in the normal operation of their Lots and the Improvements thereon. After the completion of any such construction, installation, repair, replacement, relocation and maintenance, the Common Areas on, over, under or through which such work was done shall be left in a clean and good condition, with all debris removed therefrom, with branches and cuts properly filled, with any Improvements and any plants, shrubbery or other landscaping which may have been disturbed by such work restored to their former condition and with all area within which dirt has been exposed, reseeded.

(b) Each Owner shall, and does hereby agree to, indemnify, defend and hold harmless Declarant and the other Owners, from, against and in respect of any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which any such Person may suffer or incur, or which may be asserted against such Person, whether meritorious or not, and which arise out of, by reason of or in connection with the exercise by such Owner, or its Space Tenants or other Occupants, of its rights and privileges under the Common Elements.

5.4 Limitation on Use of Common Areas. Except as expressly permitted by this Declaration or Approved by Declarant in its sole judgment and discretion: (i) no Owner, Space Tenant, or other Occupant, other than Declarant, shall construct improvements in, on or to, alter, modify, add to or reduce any portion of, the Common Areas or the Improvements therein, thereon or thereon; and (ii) no Owner, Space Tenant, or other Occupant, other than Declarant, shall at any time erect or permit to be erected any barrier to interfere in any way with the access, ingress and egress by Declarant or any other Owner, Space Tenant, or other Occupant, or their respective permitted tenants, occupants, agents, employees, customers, invitees and licensees, in, on, over, under, through or across any portion of the Common Areas.

5.5 Dedication and Transfer of Common Areas and Common Facilities. Declarant Powers as to the Common Areas shall include the right, power and authority, at all times, to do the following, at any time and from time to time, in Declarant's sole judgment and discretion, or as Declarant shall deem necessary, desirable or proper: (i) to convey or dedicate all or any part of the Common Areas, the Common Facilities and Common Elements to public use and benefit (with any fees or expenses associated therewith to be borne by Declarant); (ii) to grant easements over and across any of the Common Areas for access, ingress and egress to and from any portion of the Property; (iii) to grant easements on, in, under, over, through and across any of the Common Areas for the purpose of installing, replacing, repairing, maintaining and using all Utility Facilities; (iv) to permit any Governmental Authority or quasi-Governmental Authority, or to any public or private utility provider, to exercise any of the Common Elements; and (v) to grant such other easements with respect to the Common Areas as Declarant may approve.

5.6 Additional Declarant Powers as to Common Areas. Declarant Powers as to the Common Areas shall further include the right, power and authority, at all times, to do the following, at any time and from time to time, in Declarant's sole judgment and discretion, or as Declarant shall deem necessary, desirable or proper:

(a) without being liable to any Owner, to enter upon any portion of the Common Areas to enforce the provisions of this Declaration;

(b) to excavate, construct, erect, operate, repair, maintain, replace, modify, alter or relocate Common Facilities, or remove Common Facilities;

(c) to prohibit any Owner and its Space Tenants and other Occupants from using the Common Areas and Common Facilities in the event any annual Assessment or special Assessment levied upon or assessed against such Owner's Lot, or any other charge payable by such Owner under this Declaration, is due and unpaid;

(d) to make, establish and amend such rules and regulations, not in conflict with this Declaration, governing the use of the Common Areas and Common Facilities by Owners or non-Owners, so long as such rules and regulations are commercially reasonable;

(e) to designate within the Common Areas (even if they primarily serve a particular Occupant or group of Occupants) outdoor seating areas, water pick-up and drop-off areas, loading zones, service zones, dumpster areas and similar areas; and

(f) to take such other actions as are in keeping with the purpose and intent of this Declaration.

5.7 No Assignment of Declarant's Rights, Powers or Authority. The granting or conveyance of title to, or a leasehold estate in or to, any portion of the Common Areas by Declarant to any Owner, Space Tenant or other Occupant shall not be deemed or construed to grant or assign to such Owner, Space Tenant or other Occupant any of the Declarant Powers with respect thereto as set forth in this Article V or elsewhere in this Declaration, such Declarant Powers being hereby expressly retained by Declarant. Each Owner, Space Tenant or other Occupant of any portion of the Property that is Common Area, by acceptance of a deed, lease, sublease, or other instrument granting or conveying title to, or a leasehold estate, or other possessory interest in or to, any portion of the Property that is Common Area, whether or not it shall be so expressed in any such deed, lease, sublease, or other instrument, shall take such title or estate subject to the Declarant Powers with respect thereto, and the portion of the Property that is Common Area shall remain Common Area pursuant to this Declaration.

5.8 Relinquishment By Declarant of Common Areas. Declarant shall have the right, at any time and from time to time, in its sole discretion, to designate as Common Area any part of the Property with respect to which Declarant is the Owner, or to modify the configuration of, or reduce the area contained within, that part of the Common Area located on any part of the Property with respect to which Declarant is the Owner, without the joinder or consent of any other Owner being required and without compensation to any other Owner. Declarant shall execute and record an instrument amending this Declaration which sets out Common Areas so designated, modified or revised.

**ARTICLE VI
MAINTENANCE AND ASSESSMENTS**

6.1 Duties. Declarant shall be responsible for the maintenance, landscaping and upkeep of the Common Areas and the Common Facilities and for any other maintenance, landscaping and upkeep within the Property which inures to the common benefit of the Owners and Occupants, including the installation and maintenance of project signage (even though such signage may be located within the property of an Owner) and the installation and maintenance of landscaping within the rights of way of public roads and streets. Declarant shall also be responsible for utility and other services that may be required for street lighting, sprinkler systems, upkeep of directory signs, general maintenance, landscaping, security and other common benefits and uses.

6.2 Assessments

(a) Obligation. Declarant, for all of the Property, covenants, and each subsequent Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, covenants and agrees, and shall be deemed to covenant and agree, to pay to Declarant the annual Assessments and any special Assessments levied, assessed or imposed upon or against such Owner's Lot pursuant to this Declaration, together with interest thereon, which shall be fixed, established and collected from time to time as hereinafter provided. Each Owner shall be obligated to pay such Assessments to Declarant monthly, quarterly, annually, or in such other reasonable manner, as Declarant shall designate.

(b) Assessment Allocation. Common Expenses shall be assessed against the Assessable Lots according to their respective Assessment Ratios. Notwithstanding the foregoing, if the Declarant, from time to time, reasonably determines that any of the services provided by Declarant benefit the various Assessable Lots in a manner disproportionate to their respective Assessment Allocations, then Declarant shall be authorized to specially assess the Common Expenses related to such service in a manner reflective of the benefit derived by the various Assessable Lots.

(c) Annual Assessments. The amount of all Common Expenses not specially assessed pursuant to the other provisions of this Declaration shall be assessed against each Assessable Lot on the basis of such Assessable Lot's Assessment Ratio for such Fiscal Year, and each Assessable Lot shall pay an assessment during each Fiscal Year equal to the product of (i) the Assessment Ratio for such Assessable Lot, multiplied by (ii) the Common Expenses. The annual Assessment payable by each Owner under this Subsection 6.2(c) shall be levied by the Declarant after the same is determined in the manner set forth in this Subsection 6.2(c). At or before December 1 of each year, as to such succeeding Fiscal Year, Declarant shall prepare and submit in writing to the Owners a budget of the Common Expenses for the next succeeding Fiscal Year to be paid by Assessments collected from the Owners, together with notice of the

amount of the annual Assessment payable by each Owner during such Fiscal Year. If said budget proves inadequate for any reason, then Declarant may levy at any time an additional Assessment against the Owners and notify the Owners accordingly. If for any reason an annual budget is not adopted by Declarant as required hereby, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new budget adopted by Declarant. Common Expenses to be paid through annual Assessments shall include, but shall not be necessarily be limited to, the following:

- (i) reasonable management fees (not to exceed fifteen percent (15%) of the Common Expenses) and expenses of administration, including legal and accounting fees;
- (ii) utility charges for utilities serving the Common Areas and Common Facilities and charges for other common services for the Common Areas and Common Facilities, including, without limitation, lighting, landscaping, landscape maintenance, trash removal, snow removal, sheet cleaning, sidewalk cleaning and other Common Area cleaning;
- (iii) deductibles, retentions and co-insurance amounts under or premiums for comprehensive general liability, property damage, and any other insurance which is required to be maintained by Declarant hereunder or which Declarant may from time to time elect to obtain;
- (iv) the expenses of construction, reconstruction, maintenance, operation, and repair of the Common Areas and Common Facilities, including, without limitation, costs of labor, equipment, and materials incurred in connection therewith;
- (v) principal, interest, and other charges payable with respect to loans made to or assumed by Declarant to perform its authorized functions, including, without limitation, loans financing the construction of improvements in the Common Areas or the construction or installation of Common Facilities;
- (vi) such other expenses as may be determined from time to time by Declarant to be Common Expenses, including, without limitation, taxes, utility charges, and governmental charges not separately assessed against Lots;
- (vii) any other expense identified in this Declaration as a Common Expense and any other cost or expense that is incurred by Declarant in carrying out any of its obligations or exercising any of its rights hereunder, regardless of whether such item is capital in nature (without limiting Declarant's rights under Subsection 6.2(e) and Subsection 6.2(f)) and regardless of whether arising as a result of the negligence, misconduct, strict liability, act or omission of Declarant or any of its agents, contractors or employees (except to the extent actually reimbursed by insurance, an Owner or otherwise).

(viii) at Declarant's option, any "Assessments" under the General Declaration (as hereinafter defined) for the Central Riverfront Park; and

(ix) the establishment and maintenance of a reasonable reserve fund or funds for maintenance, repair, and replacement of those portions of the Common Areas, Improvements, and Common Facilities thereon that must be replaced on a periodic basis; and (x) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters.

In any year in which there is an excess of Assessments over expenditures, Declarant shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments, or to allocate the same to one or more reserve accounts described above.

(d) Area Specific Special Assessments. Any services provided by Declarant which benefit less than all of the Property, as reasonably determined by Declarant, may be assessed solely against that portion of the Property so benefited and each benefited Owner's 20% share shall be based upon a fraction, the numerator of which is the Assessment Allocation of such Owner's benefited Assessable Lot, and the denominator of which is the Assessment Allocation of all such benefited Assessable Lots. Any services provided to limited Common Areas shall be treated as area specific special Assessments.

(e) Special Assessments for Capital Improvements. In addition to the annual Assessments and the special Assessments authorized above, Declarant may levy special Assessments for the purposes of defraying, in whole or in part, the cost of any capital addition to or capital improvement of the Common Areas and Common Facilities (including, without limitation, the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Areas or Common Facilities (including, without limitation, the necessary fixtures and personal property related thereto), which is for the benefit of all Owners. The due date for payment of any special Assessment shall be as specified by Declarant; provided, however, that Declarant may make special Assessments payable in installments over a period that may, in Declarant's discretion, extend beyond the Fiscal Year in which the special Assessment is made.

(f) Priority of Lien. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of Declarant. Such lien shall be superior to all other liens and encumbrances on such Lot except only for: (i) liens of ad valorem taxes; and (ii) a lien for all sums unpaid on a first priority Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Declarant, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. The subordination of the lien for Assessments to the foregoing Mortgages shall apply only to Assessments that have become due and payable prior to a sale or transfer of the mortgaged interest in and to such Lot pursuant to a Foreclosure. From and after the date the holder of a Mortgage, or its successor, assignee or designee, or the acquirer upon

Foreclosure, takes possession of the Lot or succeeds to the Owner's interest in the Lot, whether by Foreclosure or otherwise, such holder or its successor, assignee or designee, or the acquirer upon Foreclosure, shall be deemed an Owner of the Lot and liable for all assessments on that Lot assessed after, accruing after, or allocable to periods of time after that date. All Persons acquiring Mortgages, liens or encumbrances on any Lot after the effective date of this Declaration shall be deemed to have subordinated such Mortgages, liens or encumbrances to such future liens for Assessments as provided herein, whether or not such subordination shall be specifically set forth in such Mortgages or other instruments creating such liens or encumbrances. Declarant shall have the power and authority, in its sole judgment and discretion, to release the assessment lien or to subordinate it to any other lien. Upon the written request of any Mortgagee, Declarant shall report to said Mortgagee any Assessments remaining unpaid on that Lot for longer than thirty (30) Days after the same are due. Any Mortgagee affected by the Assessment lien may, but shall not be required to, pay any unpaid Assessment and, upon such payment, such Mortgagee shall be assigned the debt and lien securing same, said assignment to be without recourse or warranty.

(g) Nonpayment of Assessments. Any Assessments or any portion thereof that are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than thirty (30) Days shall incur a late charge in an amount equal to five percent (5%) thereof and interest on the principal amount due, from the date due until paid at the lesser of the Prime Rate, as it may change from time to time, plus four (4) percentage points, or the maximum rate allowable under the laws of the State of Ohio. Declarant shall cause a notice of delinquency to be given to any Owner not paying within five (5) Days following the due date. If any installment of an Assessment has not been paid within fifteen (15) Days after the due date thereof, the entire unpaid balance of the Assessment may be accelerated at the option of Declarant and, if so accelerated, shall thereupon become forthwith due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge and interest described above, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. If the Assessment remains unpaid for thirty (30) Days after its original due date, Declarant may, as Declarant shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section 6.2 shall be in favor of Declarant; and each Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, vests in Declarant or its agents the right and power to sue or otherwise proceed against such Owner for the collection of such charges and/or to foreclose Declarant's lien. Declarant shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

(h) Personal Liability for Assessments. Annual Assessments and special Assessments shall be the personal and individual indebtedness of the Owner of the Lot upon or against which such Assessments are levied, assessed or imposed. No Owner shall be exempt from such personal liability for annual Assessments or special Assessments. Upon any transfer, conveyance or assignment of the interest of the Owner in and to such Lot, any then unpaid

Assessments shall become the joint and several obligation of such Owner and of such Owner's successors-in-title, whether or not expressly assumed by them. Declarant shall have the right to bring suit against the Owner to recover a money judgment for all such amounts without foreclosing or waiving the liens securing same.

(f) Exemptions. The following property and Persons subject to this Declaration shall be exempted from the Assessments hereunder:

(i) the grantee in conveyances made for the purpose of granting utility easements; and

(ii) all Common Areas and Common Facilities not included within a Lot, or Declarant or any Governmental Authority, and all improvements of every kind constructed, installed, or planned by Declarant or Declarant or any Governmental Authority, in any part of the Common Areas.

(g) Special Assessments for Damages. In addition to all annual Assessments and special Assessments authorized above, Declarant may at any time, in its discretion, levy a special Assessment against the Owner of any Lot for the repair of any damage to any area, including, without limitation, Common Areas and public road rights of way (other than normal wear and tear), caused by the Owner of such Lot or such Owner's permittees. The notice of such special Assessment shall describe the nature of the damage and the necessary repairs, and any such special Assessment shall be due and payable to Declarant on or before the date thirty (30) days following such Owner's receipt of such notice. Declarant may, in its discretion, levy any such special Assessment prior to the commencement of the repairs for which such special Assessment is levied; provided that upon receipt of payment of such special Assessment Declarant shall promptly undertake to have such repairs made and shall refund to such Owner any excess of the amount assessed and paid over the cost of such repairs. In the event that the cost of such repairs exceeds the amount assessed and paid, Declarant may assess the Owner for such excess costs. By way of illustration and not limitation, the special Assessments provided for in this Subsection 6.2(f) may be made for the purposes of repairing roadway damage caused by heavy trucks and construction vehicles during construction on any Lot, or for excess situation resulting from construction activity on any Lot.

(h) Waiver of Use. No Owner may exempt itself from liability for any Assessments duly levied by Declarant, nor release the Lot or other property owned by it from the liens and charges hereof, by non-use or waiver of the use and enjoyment of the Common Areas and Common Facilities or by abandonment of its Lot or any other property owned by such Owner within the Property.

6.3 Assessment of Manager. In performing its responsibilities hereunder, Declarant shall have the authority to delegate to Persons of its choice (including, without limitation, Persons affiliated with Declarant) such duties of Declarant as may be determined by Declarant. In furtherance of the foregoing and not in limitation thereof, Declarant may employ

28

UTDOW.M0001.1

any Person (including, without limitation, Persons affiliated with Declarant) to manage the Property or any part thereof, as well as such other personnel as Declarant shall deem necessary or desirable, whether such personnel are furnished or employed directly by Declarant or by any Person with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be Common Expenses.

6.4 Legal and Accounting Services. Declarant may pay, as a Common Expense, for such legal and accounting services as are necessary or desirable in connection with the management of the Property or the interpretation, amendment, or enforcement of this Declaration.

6.5 Rules and Regulations. Declarant may from time to time and at any time (but is not obligated to) make, establish, abolish, amend and/or enforce reasonable nondiscriminatory rules and regulations concerning the use of the Property or any portion thereof, including, without limitation, the Common Areas and Common Facilities. The text of any such rules and regulations and amendments thereto shall be furnished by Declarant to each Owner.

6.6 Limitation on Liability. Neither Declarant nor any agent, or employee of Declarant shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of Declarant's duties under this Article VI unless due to the willful misconduct, gross negligence or bad faith of Declarant or its respective directors, officers, agents or employees, as the case may be.

6.7 Insurance. Declarant shall obtain and maintain at all times: (a) (i) "all risk" insurance for all of the insurable improvements on the Common Areas which can be insured for a reasonable premium, in an amount consonant with full replacement value of such insurable improvements, (ii) fidelity coverage against dishonest acts on the part of its directors and officers responsible for handling funds belonging to or administered by Declarant in an amount deemed reasonable by Declarant; (iii) commercial general liability insurance in amounts established by Declarant from time to time; and (iv) such other types of insurance either required by law or authorized by Declarant from time to time; or (b) self-insurance in an amount that would provide no less coverage than required by clause (a), above.

6.8 Damages, Destruction or Condemnation. In the event of damage to, destruction of or condemnation of all or any portion of the Common Areas or Common Facilities, the provisions of this Section 6.8 shall govern the repair and restoration thereof.

(a) If the insurance proceeds or condemnation award are sufficient to effect total restoration or replacement, then Declarant shall cause the Common Areas and the Common Facilities to be so repaired, reconstructed and/or replaced substantially as they previously existed.

29

UTDOW.M0001.1

(b) If the insurance proceeds or condemnation award are insufficient to effect total restoration, repair or replacement of the Common Areas and Common Facilities, then Declarant may: (i) cause the Common Areas and Common Facilities to be repaired, reconstructed and/or replaced in a way which utilizes all available insurance proceeds or condemnation award to the extent of such proceeds; or (ii) levy a special Assessment to provide the additional funds necessary to effect total restoration, repair or replacement of the Common Areas and Common Facilities; or (iii) elect not to rebuild, repair and/or replace such Common Areas and Common Facilities and elect to distribute the available insurance proceeds and condemnation award to the Owners and the Declarant, and their respective Mortgagees, based upon their respective Assessment Ratios. In the event after any such repair, reconstruction and/or replacement, there remains any unused insurance proceeds, condemnation award or special Assessments, Declarant shall determine either: (1) to apply such excess or any portion thereof against and reduce the subsequent year's General Assessments under Subsection 6.2(c) hereof; or (2) to allocate the same to one or more reserve accounts described in Subsection 6.2(e) hereof.

ARTICLE VII

DURATION, MODIFICATION, TERMINATION AND ESTOPPEL

7.1 Duration. The provisions of this Declaration shall run with the land and bind title to the Property, shall be binding upon and inure to the benefit of Declarant and all Owners, and Mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be enforceable as provided herein for a term of 99 years from the effective date of this Declaration, provided that the easements established by this Declaration shall survive termination of this Declaration.

7.2 Amendment.

(a) Provided the same shall not (i) adversely affect the title to any Lot, (ii) change the Assessment Ratio pertaining to a Lot, (iii) materially alter or change any Owner's right to the use and enjoyment of its Lot and the Common Areas and Common Facilities, or (iv) otherwise make any material change in this Declaration, each Owner agrees that this Declaration may be amended solely by Declarant by an instrument in writing executed by Declarant and placed of record in the real property records of Hamilton County, Ohio, if: (A) such amendment is necessary to bring any provision hereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable Governmental Requirement; (B) such amendment is required by any Governmental Requirement applicable to or promulgated by a governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Property; or (C) any such amendment is necessary to enable any Governmental Authority to insure mortgage loans on any portion of the Property based on any Governmental Requirement.

(b) Notwithstanding anything to the contrary contained in this Declaration, any amendment to this Declaration which would change, alter, modify or rescind any right, title,

interest or privilege herein expressly granted to a Mortgagee, shall require the prior written approval of such Mortgagee.

(c) Amendments made pursuant to the provisions of this Section 7.2 shall inure to the benefit of and be binding upon Declarant, any Declarant, all Owners and Occupants and their respective Mortgagees.

7.3 Binding Effect. Each Owner of a Lot (including any purchaser of Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated or extended as provided above.

7.4 Effective Date of Declaration. The effective date of this Declaration shall be the date of its filing for record in the real property records of Hamilton County, Ohio.

7.5 Rights of Third Persons. This Declaration shall be recorded for the benefit of Declarant, the Owners and their respective Mortgagees as herein provided, and by such recording, no adjoining property owner or other Person shall have any right, title or interest whatsoever in the Property, this Declaration, the operation or continuation of this Declaration or the enforcement of any of the provisions hereof, and this Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any adjoining owner or third Person.

ARTICLE VIII

ENFORCEMENT

8.1 Responsibility of Owner. Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its Space Tenants, Occupants, employees, agents, independent contractors, tenants, customers, and visitors.

8.2 Failure to Pay Assessments. If any Assessment is not paid when due, the Owner and the Lot shall be subject to the provisions of Section 6.2 hereof.

8.3 Non-monetary Violations. Violation or breach of any term, provision, or condition contained herein or of any rules or regulations promulgated pursuant hereto or in any other document promulgated pursuant hereto (other than a failure to pay when due an Assessment) shall give to Declarant the right to prosecute a proceeding at law or in equity against the Owner who has violated, is attempting to violate, or is permitting (or is allowing to exist) the violation or breach on its Lot of any term, provision, or condition contained herein or in any other document promulgated pursuant hereto. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such Owner from committing such violation or breach or to cause said violation or breach to be remedied, such Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease

or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby acknowledging that no adequate remedy exists at law to cure such violations or breaches.

8.4 Failure to Enforce Not a Waiver. The failure of Declarant to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. No suit shall lie against Declarant for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

8.5 Inspection. Declarant and its authorized representatives may from time to time at any reasonable hour or hours, enter and inspect any Improvements or Lot to ascertain compliance with this Declaration and any other documents promulgated pursuant hereto.

8.6 Right to Enter and Cure.

(a) In the event of any violation or breach of this Declaration or any other document promulgated pursuant hereto, Declarant shall have the right, after notice of such violation or breach and a reasonable opportunity to cure the same have been given to the Owner of any Lot as to which a breach or violation exists (or without notice if Declarant, in its sole discretion, determines that such violation or breach has resulted in an emergency situation), to enter upon said Lot and summarily abate and remove, at the expense of the Owner or Occupant thereof, any structure, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof or any documents promulgated pursuant hereto, or to do anything that should have been done by an Owner hereunder or under any other document promulgated pursuant hereto, without any liability for damages for wrongful entry, trespass or otherwise to any Person.

(b) Each Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, and each Occupant, by acceptance of its occupancy interest, binds itself, its successors and assigns, to pay to Declarant the actual cost to cure any violation hereunder, together with liquidated damages of ten (10%) percent of such cost, which damages are, when collected, to be allocated by Declarant toward defraying the cost of enforcing this provision. In addition, the amounts so expended by Declarant in accordance with this Subsection 8.6(b) shall be Assessments against the Lot on which the violation occurred.

8.7 Attorneys' Fees. Every Owner or Occupant shall be obligated to pay the actual attorneys' fees (which shall be reasonable in amount) of the Person bringing an action against such Owner or Occupant for the enforcement of the provisions of this Declaration, provided such Person bringing said action has obtained a judgment in its favor by a court of record and such judgment has become final.

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8.8 Assessments. All sums expended by Declarant in enforcing this Declaration, including, without limitation, sums expended pursuant to Subsection 8.6(b) hereof, shall be immediately due and payable by the Owner in violation and shall be Assessments against such Owner.

8.9 Remedies Cumulative. The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies.

8.10 Waiver. Any action or omission whereby any term contained in this Declaration or in any other document promulgated pursuant hereto is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such action or omission and may be exercised by Declarant.

ARTICLE IX

DECLARANT INTEREST

9.1 Assignment of Declarant Interest. The Declarant Interest may be assigned by Declarant, in whole or in part, to any Person that agrees, to the extent of such assignment, to assume the Declarant Obligations arising from and after the date of such assignment. To be effective, such assignment must be in writing and in recordable form and specifically refer to the Declarant Interest, or portion thereof, which is being assigned. Upon acceptance of such assignment, such assignee shall, to the extent of such assignment, assume the Declarant Obligations arising from and after the date of such assignment and shall have the Declarant Powers, but shall have no liability for the acts or omissions of any prior Declarant. Upon such assignment, and to the extent thereof, the assigning Declarant shall be relieved from all Declarant Obligations arising from and after the date of such assignment. The term "Declarant", as used herein, includes all such assignees and their heirs, successors and assigns. Notwithstanding anything to the contrary set forth herein, the mere conveyance or transfer of ownership of or any other interest or estate in land within the Property by Declarant to any Person, whether by deed, lease, sublease or other instrument, shall in no way convey all or any portion of the Declarant Interest.

ARTICLE X

ADDITIONAL PROVISIONS

10.1 Cumulative Effect of Specific Declarations. The Lots are and shall be subject to those certain Specific Declarations of Easements, Covenants, Conditions and Restrictions by the County, the City and the respective Owners of such Lots (the "Specific Declarations"). The

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Specific Declarations shall continue in full force and effect, and this Declaration shall not supersede nor replace the Specific Declarations.

10.2 Continuing Effect of General Declaration. The Property is subject to that certain General Declaration of Covenants, Conditions and Restrictions by the County and the City, dated on or about September 2, 2008, recorded in Official Record Book 11294, Page 2231, Recorder's Office, Hamilton County, Ohio (the "General Declaration"). The General Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the General Declaration.

10.3 Continuing Effect of Parking Agreement. The Property is subject to that certain First Amended and Restated Master Parking Facilities Operating and Easement Agreement by the County and Declarant dated on or about September 2, 2009, recorded in Official Record Book 11294, Page 2252, Recorder's Office, Hamilton County, Ohio, as joined in by each Owner pursuant to a Master Agreement (the "Master Parking Agreement"). The Master Parking Agreement shall continue in full force and effect, and this Declaration shall not supersede nor replace the Master Parking Agreement.

10.4 Additional Declarations. Owners may subject their Lots to additional declarations of easements, covenants, conditions and restrictions (including, without limitation, condominium declarations), and nothing in this Declaration shall prohibit or preclude any such additional declarations.

ARTICLE XI MISCELLANEOUS

11.1 Certificate of Compliance. Upon payment of a reasonable fee specified by Declarant and upon written request of any Owner, Space Tenant or Mortgagee, or any prospective Owner, Space Tenant or Mortgagee, Declarant shall issue and acknowledge a certificate in recordable form setting forth the amounts of any unpaid assessments, if any, against such Lot and setting forth generally whether or not, to Declarant's actual knowledge, there is any substantiated violation or breach of this Declaration in respect of such Lot. Said written statement shall be conclusive upon Declarant in favor of the Persons who rely thereon in good faith.

11.2 Parties Bound. This Declaration shall run with the Property and each and every part thereof, shall bind Declarant, the Owners and all Persons having or acquiring any interest in the Property or any part thereof, and their respective heirs, successors, personal representatives and assigns, and shall inure to the benefit of and be enforceable by Declarant and its successors and assigns, and each Owner and its successors and assigns. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration and all of the terms and provisions hereof, whether or

not such Person shall have executed any document or instrument evidencing the same. Notwithstanding the foregoing, upon an Owner's sale, transfer or conveyance of all of its right, title and interest in and to its Lot, the selling, transferring or conveying Owner shall not have any liability for any duty, obligation, liability or responsibility which shall first accrue under this Declaration in respect of such Lot after the date that (i) evidence of such sale, transfer or conveyance is recorded in the real property records of Hamilton County, Ohio, and (ii) the Owner has given Declarant written notice of such sale, transfer or conveyance which sets forth the name and address of the transferee and a copy of the instrument of sale, transfer or conveyance; provided, however, that nothing herein shall be deemed or construed so as to relieve any such Owner from any duty, obligation, liability or responsibility that accrued under this Declaration in respect of such Lot prior to such sale, transfer or conveyance.

11.3 Applicable Law, Venue and Jury Trial Waiver. This Declaration concerns real property located in the State of Ohio and shall be governed by and interpreted in accordance with the laws of the State of Ohio. The venue for any action or suit brought against any Owner relating to this Declaration or the enforcement of any provisions hereof shall be exclusively in Hamilton County, Ohio. Any Person affected hereby submits to the jurisdiction of the state and Federal courts sitting in Hamilton County, Ohio, and waives the right to sue or be sued elsewhere. **EACH OWNER AND OTHER PERSON AFFECTED HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.**

11.4 Severability. If any Article, Section, Subsection, term or provision of this Declaration shall be or become illegal, null, void or unenforceable for any reason or shall be held by any court of competent jurisdiction to be illegal, null, void or unenforceable, the remaining Articles, Sections, Subsections, terms and provisions will continue to remain in full force and effect irrespective of the fact that any one or more of the other Articles, Sections, Subsections, terms or provisions shall become or be illegal, null, void or unenforceable.

11.5 Conflicts. All applicable building and inspection codes and regulations, and any and all other Governmental Requirements shall be observed. In the event of any conflict between this Declaration and such Governmental Requirements, the provisions which require more restrictive standards shall apply.

11.6 No Reverter. No covenant or restriction set forth in this Declaration is intended to be or shall be construed as a condition subsequent, a conditional limitation, or as creating a possibility of reverter.

11.7 Grants and Agreements. The grants, reservations, creation and establishment of the easements, rights and privileges in this Declaration are independent of any contractual agreements or undertakings hereunder and a breach by Declarant, any Owner or any Occupant of any such contractual agreements or undertakings shall not cause or result in a forfeiture, termination or reversion of the easements, rights and privileges created by this Declaration.

11.8 Interpretations. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the purpose set forth in Article I hereof. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any Owner, including, without limitation, Declarant, by any court or other Governmental Authority by reason of such Owner's having or being deemed to have structured or drafted such provision.

11.9 Captions. The captions of each Article, Section and Subsection hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article, Section or Subsection to which they refer.

11.10 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or to other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.11 Rights of First Mortgages. Each first priority Mortgagee shall be entitled to written notice from Declarant of any default by the Owner of the Lot encumbered by its Mortgage in the performance of its obligations under this Declaration which is not cured within sixty (60) days; provided, however, that each such first priority Mortgagee shall have first filed with Declarant a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of such Mortgagee at an address stated in such notice.

11.12 Time is of Essence. Time is of the essence of this Declaration and every provision hereof.

11.13 Force Majeure. Notwithstanding anything herein to the contrary, Declarant and each Owner shall have an extension with respect to all time periods within which Declarant and such Owner must act or react equal to the number of Days of delay caused by adverse weather conditions, labor disputes, fire, casualty, acts of God or any other similar event beyond the direct control of Declarant or such Owner, as the case may be, other than the financial inability of an Owner.

11.14 Net a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Lot or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no third-party Person shall be deemed to be a beneficiary of any of the terms and provisions of this Declaration.

11.15 Notices. Any notice to be given under this Declaration shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder,

and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery. The address for an Owner shall be the most recent address of said Owner designated in writing to Declarant and given in accordance with this Section 11.15, or if not so designated, as shown on the tax rolls of Hamilton County, Ohio. The initial address for Declarant shall be:

Riverbanks Renaissance, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363
Attn: Scott D. Stringer
Telecopy: (404) 888-3044
Telephone: (404) 888-4340

and

Riverbanks Renaissance, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303
Attn: Terrence Hagley, Executive Vice President
Telecopy: (404) 347-8848
Telephone: (404) 446-3361

Declarant may change its address by filing a written instrument in the recording office where this Declaration is filed stating its new address.

[SIGNATURES FOUND ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed, sealed and delivered this Declaration, as of the ____ day of December, 2010.

DECLARANT:

RIVERBANKS RENAISSANCE, LLC, a Delaware limited liability company

By: Carter & Associates Commercial Services, L.L.C.,
Manager

By: Carter & Associates Enterprises, Inc.,
Manager

By: _____
Name: _____
Title: _____

PHASE I-A OWNER:

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company

By: Riverbanks Renaissance Phase I-A Mezzanine, LLC,
a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Joint Venture, LLC,
a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-A Equity, LLC,
a Delaware limited liability company, its Managing Member

By: _____
Name: _____
Title: _____

38

02/08/2013

PHASE I-B OWNER:

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC, a Delaware limited liability company

By: Riverbanks Renaissance Phase I-B Mezzanine, LLC,
a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-B Joint Venture, LLC,
a Delaware limited liability company, its sole Member

By: Riverbanks Renaissance Phase I-B Equity, LLC,
a Delaware limited liability company, its Managing Member

By: _____
Name: _____
Title: _____

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of Carter & Associates Enterprises, Inc., a Georgia corporation, on behalf of such corporation as manager of Carter & Associates Commercial Services, L.L.C., a Georgia limited liability company, on behalf of said limited liability company as manager of Riverbanks Renaissance, LLC, a Delaware limited liability company, on behalf of such limited liability company.

Notary Public

39

02/08/2013

EXHIBIT "A"
MASTER DEVELOPMENT PLAN

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of Riverbanks Renaissance Phase I-A Equity, LLC, the Managing Member of Riverbanks Renaissance Phase I-A Joint Venture, LLC, the sole Member of Riverbanks Renaissance Phase I-A Mezzanine, the sole Member of Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of Riverbanks Renaissance Phase I-B Equity, LLC, the Managing Member of Riverbanks Renaissance Phase I-B Joint Venture, LLC, the sole Member of Riverbanks Renaissance Phase I-B Mezzanine, the sole Member of Riverbanks Renaissance Phase I-B Owner, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

This instrument was prepared by:
R. Bailey Tague, Jr.
Kilpatrick Stockton LLP
1100 Peachtree Street, Suite 2900
Atlanta, Georgia 30309

EXHIBIT "B"

PHASE 1A PROPERTY

Lot 16B-1A:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

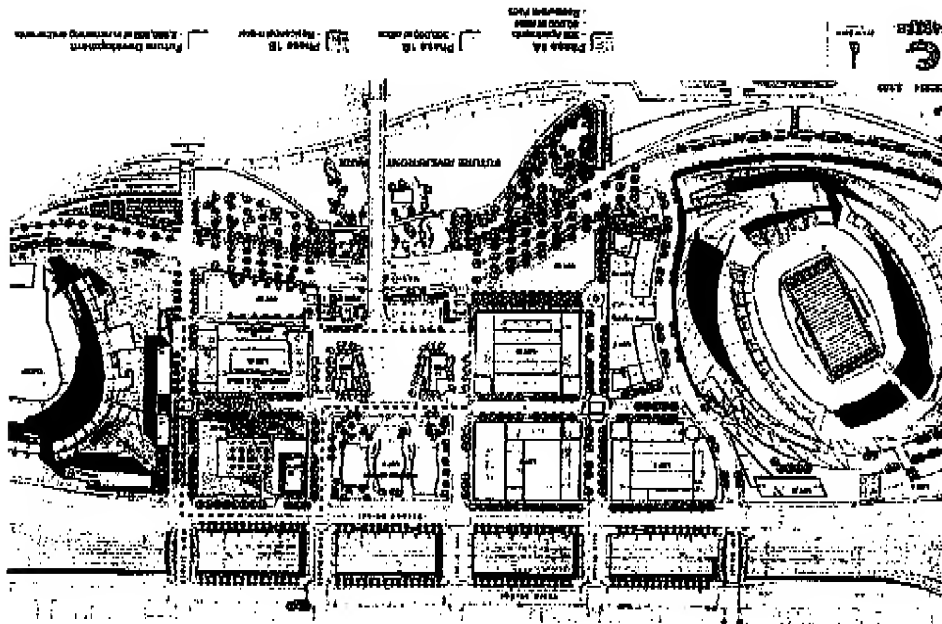
BEGINNING at the intersection of the south line of Freedom Way (a 70' right-of-way) with the east line of Walnut Street (a 70' right-of-way), said point also being the northwest corner of Lot 16B; thence along said lines of Freedom Way and Lot 16B, North $80^{\circ}22'31''$ East, 326.59 feet to a point; thence South $9^{\circ}37'29''$ East, 160.00 feet to a point; thence South $80^{\circ}22'31''$ West, 239.92 feet to a point; thence South $9^{\circ}37'29''$ West, 50.00 feet to a point in a south line of aforesaid Lot 16B; thence along southerly lines of said Lot 16B the following five (5) courses and distances: South $80^{\circ}22'31''$ West, 5.67 feet to a point; North $9^{\circ}37'29''$ West, 8.00 feet to a point; South $80^{\circ}22'31''$ West, 50.00 feet to a point; North $9^{\circ}37'29''$ West, 15.00 feet to a point; and South $80^{\circ}22'31''$ West, 31.00 feet to a point in the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 16B; thence along said line of Walnut Street and the west line of said Lot 16B, North $9^{\circ}37'29''$ West, 227.00 feet to the POINT OF BEGINNING; said tract of land containing 1.3531 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Parishon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6923.

Lot 26B-1A:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Second Street (an undedicated right-of-way) and in the north line of said Lot 26B of The Banks Phase IV, said point being North $80^{\circ}22'31''$ East, 132.90 feet from the northwest corner of Lot 26B and also from the intersection of said south line of Second Street with the east line of Walnut Street (a 70' right-of-way); thence along said lines of Second Street and Lot 26B, North $80^{\circ}22'31''$ East, 262.25 feet to the intersection of said south line of Second Street with the west line of Main Street (a 70' right-of-way), said point also being



THE BANKS
MASTER PLAN

EXHIBIT "C"

PHASE 1B PROPERTY

Lot 16B-1B:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Freedom Way (a 70' right-of-way) and in the north line of said Lot 16B of The Banks Phase IV, said point being North 80°22'31" East, 326.58 feet from the northwest corner of Lot 16B and also from the intersection of said south line of Freedom Way with the east line of Walnut Street (a 70' right-of-way); thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 68.17 feet to the intersection of said south line of Freedom Way with the west line of Main Street (a 70' right-of-way), said point also being the northeast corner of said Lot 16B; thence along said lines of Main Street and Lot 16B, South 93°37'29" East, 242.00 feet to the southeast corner of said Lot 16B; thence along southerly lines of said Lot 16B the following three (3) courses and distances: South 80°22'31" West, 72.75 feet to a point; South 93°37'29" East, 8.00 feet to a point; and South 80°22'31" West, 235.33 feet to a point; thence North 93°37'29" West, 90.00 feet to a point; thence North 80°22'31" East, 239.92 feet to a point; thence North 93°37'29" West, 160.00 feet to the **POINT OF BEGINNING**; said tract of land containing 0.8735 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Pundison, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

Lot 26B-1B:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio, and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the south line of Second Street (an undedicated right-of-way) with the east line of Walnut Street (a 70' right-of-way), said point also being the northwest corner of said Lot 26B; thence along said lines of Second Street and Lot 26B, North 80°22'31" East, 132.50 feet to a point; thence South 93°37'29" East, 193.33 feet to a point; thence South 80°22'31" West, 132.50 feet to a point in the aforesaid east line of Walnut Street and also in the

4

LOT 16B-1B

the northeast corner of said Lot 26B; thence along said lines of Main Street and Lot 26B, South 93°37'29" East, 285.00 feet to the intersection of said west line of Main Street with the north line of Freedom Way (a 70' right-of-way), said point also being the southeast corner of said Lot 26B; thence along said lines of Freedom Way and Lot 26B, South 80°22'31" West, 194.75 feet to the intersection of said north line of Freedom Way with the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 26B; thence along said line of Walnut St. and west line of Lot 26B, North 93°37'29" West, 91.67 feet to a point; thence North 80°22'31" East, 132.50 feet to a point; thence North 93°37'29" West, 193.33 feet to the **POINT OF BEGINNING**; said tract of land containing 1.9946 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Pundison, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

Lot 17:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being Lot 17 of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

Lot 19:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being Lot 19 of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

3

LOT 19

west line of said Lot 26B; thence along said lines of Walnut Street and Lot 26B, North 9°31'29" West, 193.33 feet to the POINT OF BEGINNING; said tract of land containing 0.5881 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

EXHIBIT "D"

FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT
(Lot ____)

THIS JOINDER AGREEMENT (this "Agreement") is made as of the ____ day of _____, 20____, by RIVERBANKS RENAISSANCE, LLC, a Delaware limited liability company ("Declarant"), and _____, a _____ ("Lot Owner").

Recitals

A. Declarant is the "Declarant" under that certain Declaration of Covenants, Condition, Restrictions, Reservations and Easements for The Banks dated as of December 2010, recorded in Official Record Book _____, Page _____, Recorder's Office, Hamilton County, Ohio (the "Declaration"). All capitalized terms used in this Agreement which are defined in the Declaration and not otherwise defined in this Agreement shall have the meanings given in the Declaration.

B. On or about this date, Lot ____ Owner is acquiring the following real property ("Lot ____"):

[Insert Legal Description]

Lot ____ is a "Lot," as defined in the Declaration.

C. Declarant and Lot ____ Owner are entering into this Agreement pursuant to Section 1.6 of the Declaration.

Statement of Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant and Lot ____ Owner hereby agree as follows:

1. Joinder. Lot ____ Owner joins in the Declaration with respect to Lot _____. From and after the date of this Agreement, Lot ____ Owner shall be subject to, and entitled to the benefit of, the Declaration with respect to Lot _____.

IN WITNESS WHEREOF, Declarant and Lot ___ Owner have executed this Agreement as of the date first set forth above.

DECLARANT:

RIVERBANKS RENAISSANCE, LLC

By: Carter & Associates Commercial Services, L.L.C., Manager

By: Carter & Associates Enterprises, Inc., Manager

By: _____
Name: _____
Title: _____

LOT ___ OWNER:

By: _____
Name: _____
Title: _____

2. Incorporation of Declaration. The provisions of the Declaration are incorporated herein by reference.

6. Notice Address. The notice address of Lot ___ Owner for purposes of Section 11.15 of the Declaration shall be the following, or such other address as Lot ___ Owner may designate for itself from time to time by notice given in accordance with Section 11.15 of the Declaration:

A/R: _____
Telex: _____
Telephone: _____

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and shall run with the land.

8. Capitions. The capitions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement or used in construing or interpreting any provision hereof.

9. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

[Signatures begin on following page]

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of ____
20____ by _____ of Carter & Associates Enterprises, Inc., a
Georgia corporation, on behalf of the corporation as manager on behalf of Carter & Associates
Commercial Services, L.L.C., a Georgia limited liability company, as manager on behalf of
Riverbanks Renaissance, LLC, a Delaware limited liability company.

Notary Public

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of ____
20____ by _____ of _____, on behalf of the
company.

Notary Public

This instrument was prepared by:

EXHIBIT "P"
Specific Declaration

TABLE OF CONTENTS

	Page
ARTICLE 1: DEFINITIONS	3
1.1 Definitions	3
ARTICLE 2: DESIGN AND CONSTRUCTION	22
2.1 Approved Design Documents	22
2.2 Design of Parking Facility	22
2.3 Design of Pedestrians	26
2.4 Design of Street Grid Improvements and Utilities	28
2.5 Design of Banks Improvements	30
2.6 Construction of Parking Facility	34
2.7 Construction of Pedestrians	36
2.8 Construction of Street Grid Improvements and Utilities	39
2.9 Construction of Banks Improvements	41
2.10 Allocation of Infrastructure Costs	56
2.11 General Coordination and Cooperation	57
2.12 Resolution of Construction Disputes	57
2.13 Certificate of Completion	58
ARTICLE 3: USE AND OPERATING RESTRICTIONS AND COVENANTS	59
3.1 Nuisances	59
3.2 Compliance With Legal Requirements	59
3.3 Real Estate Taxes	59
3.4 Utilities	60
3.5 Maintenance and Repair	60
3.6 Flooding	61
3.7 Security	61
3.8 Restrictions on Use of Developer Parking Spaces	61
3.9 Restriction on Use of Parks of Lot 75B-1A	62
ARTICLE 4: INSURANCE	62
4.1 The County's Insurance	62
4.2 Developers' Insurance	64
4.3 Adjustments of Definition Limits	65
4.4 Waiver of Subrogation	65
ARTICLE 5: CASUALTY; VOLUNTARY DEMOLITION	66
5.1 Casualty	66
5.2 Voluntary Demolition	68
ARTICLE 6: EASEMENTS	69
6.1 Easements in Parking Property for Historic oBanks Property	69

SPECIFIC DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Lots 16A, 16B, 26A and 26B, The Banks, Phase IV)

BY

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC,

THE BOARD OF COUNTY COMMISSIONERS
OF HAMILTON COUNTY, OHIO

AND

THE CITY OF CINCINNATI, OHIO

6.2	Excesses in Banks Property for Benefit of Parking Property	73
6.3	Excesses in Banks Property for Benefit of City	76
ARTICLE 7: REIMBURSABLE PRIVATE PARKING COSTS		
7.1	Developer Parking Spaces	77
7.2	Dedicated Parking Spaces	77
7.3	Audit Rights	79
7.4	Financing	80
ARTICLE 8: DEFERRED PURCHASE PRICE		
8.1	Deferred Purchase Price and Payment of Deferred Purchase Price	80
8.2	General Provisions Regarding Deferred Purchase Price	80
ARTICLE 9: TRANSFERS		
9.1	Transfer of Equity Interests	82
9.2	Transfer of Development Lots	82
9.3	Qualified Mortgage/Mortgages	84
9.4	Rights of Banks Qualified Mortgage/Mortgages	85
9.5	Rights of Parking Qualified Mortgage/Mortgages	86
9.6	Modifications Requested by Mortgagees	86
ARTICLE 10: ADDITIONAL PROVISIONS		
10.1	Banks Parking Facilities	88
10.2	Third Party Rights in Parking Facility	88
10.3	Continuing Effect of General Declaration	88
10.4	Relationship to Master Development Agreement	88
10.5	Consistency of Public Purposes	88
10.6	Continuing Effect of General Declaration	89
10.7	County Rights to Enforce Service Agreements	89
ARTICLE 11: REPRESENTATIONS		
11.1	Representations by Phase 1A Developer	89
11.2	Representations by Phase 1B Developer	90
11.3	Representations by the County	90
11.4	Representations by the City	91
ARTICLE 12: ENFORCEMENT		
12.1	Default Notices	91
12.2	Enforcement	92
12.3	Self-Help	92
12.4	Liens	92
ARTICLE 13: GENERAL PROVISIONS		
13.1	Escaped Certificates	93
13.2	Notices	93

13.2	Binding Effect: Duration	96
13.3	Amendments	97
13.4	Calculation of Time Periods	97
13.5	Severability	97
13.6	Choice of Law	97
13.7	Jurisdiction and Venue	97
13.8	Usage	97
13.9	Capex	97
13.10	Waiver	97
13.11	Counterparts	97
13.12	Third Parties	98
13.13	No Joint Liability	98
13.14	Release from Liability	98
13.15	Set Off	98
13.16		98

**SPECIFIC DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Lots 16A, 16B, 26A and 26B, The Banks, Phase IV)

THIS SPECIFIC DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into as of the 2nd day of September, 2009, by RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase 1A Developer"), RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Phase 1B Developer") (Phase 1A Developer and Phase 1B Developer being called, collectively, "Developers" and individually, a "Developer"), THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), and THE CITY OF CINCINNATI, OHIO, an Ohio municipal corporation (the "City") (the County and the City being called, collectively, the "Public Parties" and, individually, a "Public Party").

Recitals

A. The Public Parties collectively own the fee simple interest in certain real property situated in the City of Cincinnati, Hamilton County, Ohio, being more particularly described as follows:

Lot 16A ("Lot 16A"), Lot 16B ("Lot 16B"), Lot 26A ("Lot 26A") and Lot 26B ("Lot 26B") of The Banks Phase IV, as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

Lot 16A, Lot 16B, Lot 26A and Lot 26B are depicted in Exhibit A-1 hereto. Lot 16B is immediately above Lot 16A, and Lot 26B is immediately above Lot 26A.

B. Lot 16B consists of two lots, depicted as Lot 16B-1A ("Lot 16B-1A") and Lot 16B-1B ("Lot 16B-1B") in Exhibit A-2 hereto, being more particularly described in Exhibit A-3 hereto.

C. Lot 26B consists of two lots, depicted as Lot 26B-1A ("Lot 26B-1A") and Lot 26B-1B ("Lot 26B-1B") in Exhibit A-4 hereto, being more particularly described in Exhibit A-5 hereto.

D. Contemporaneously with this Declaration, the City is conveying to Phase 1A Developer the fee simple interest in Lot 16B-1A and Lot 26B-1A (each a "Phase 1A Lot" and collectively, the "Phase 1A Lots") and the City is conveying to Phase 1B Developer the fee simple interest in Lot 16B-1B and Lot 26B-1B (each a "Phase 1B Lot" and collectively, the "Phase 1B Lots"). After such conveyances, the County will own the fee simple interest in Lot 16A and Lot

26A (each a "Ground Lot" and collectively, the "Ground Lots"), Phase 1A Developer will own the fee simple interest in the Phase 1A Lots and Phase 1B Developer will own the fee simple interest in the Phase 1B Lots.

E. The County is constructing, or intends to construct, intermodal parking facilities on and within the Ground Lots and within portions of the rights-of-way adjacent to the Ground Lots as depicted generally in Exhibit B-1 hereto (the "Parking Facility"). Lot 16A and the portion of the Parking Facility from time to time located on and within Lot 16A are called the "Lot 16 Parking Property." Lot 26A and the portion of the Parking Facility from time to time located on and within Lot 26A are called the "Lot 26 Parking Property," and the Lot 16 Parking Property and the Lot 26 Parking Property are collectively called the "Parking Property." The County intends that the Parking Facility will be a part of, and integrated with, larger intermodal parking facilities constructed, or to be constructed, by the County as depicted in Exhibit B-2 hereto (the "Banks Parking Facilities").

F. In conjunction with the construction of the Parking Facility, the County intends to construct (i) a structural deck within Lot 16B, located immediately above all structural columns of the Lot 16 Parking Property, for support of improvements to be constructed by Phase 1A Developer within Lot 16B-1A and by Phase 1B Developer within Lot 16B-1B (the "Lot 16 Podium"), and (ii) a structural deck within Lot 26B, located immediately above all structural columns of the Lot 26 Parking Property, for support of improvements to be constructed by Phase 1A Developer within Lot 26B-1A and by Phase 1B Developer within Lot 26B-1B (the "Lot 26 Podium"). The Lot 16 Podium and the Lot 26 Podium are each a "Podium" and collectively called the "Podiums." Each of the Lot 16 Podium and the Lot 26 Podium shall include the waterproofing membrane(s) and/or drainage system, expansion joints and other related components to be constructed and installed as part thereof, but shall exclude any overlay constructed thereon by Phase 1A Developer or Phase 1B Developer.

G. Phase 1A Developer intends to construct improvements on and above the Podiums within the Phase 1A Lots (the "Phase 1A Improvements"). As of the date of this Declaration, Phase 1B Developer intends to construct improvements on and above the Podiums within the Phase 1B Lots (the "Phase 1B Improvements"). The Phase 1A Improvements and the Phase 1B Improvements are collectively called the "Banks Improvements." Lot 16B, Lot 26B, the Podiums and the Banks Improvements are collectively called the "Banks Property."

H. In conjunction with the construction of the Parking Facility, the Podiums and the Banks Improvements, the Public Parties intend to (i) construct public improvements within the public rights-of-way adjacent to Lot 16B and Lot 26B (the "Street Grid Improvements"), and (ii) relocate and/or install utility facilities (the "Utilities") intended to serve Lot 16B and Lot 26B as provided herein.

I. Phase 1A Developer, Phase 1B Developer, the County and the City desire to enter into this Declaration in order to provide for the coordination of the design and construction of the

Parking Facility, the Podiums, the Phase 1A Improvements, the Phase 1B Improvements, the Street Grid Improvements and the Utilities, to establish certain easements, covenants, conditions and restrictions regarding the Parking Property and the Banks Property, and to set forth certain other agreements among themselves regarding the Parking Property and the Banks Property that are intended to run with the land.

Statement of Declaration

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Phase 1A Developer, Phase 1B Developer, the County and the City hereby declare that the Parking Property and the Banks Property are and shall be subject to the easements, covenants, conditions, restrictions and other provisions set forth below.

ARTICLE I DEFINITIONS

1.1 Definitions. As used in this Declaration, the following terms have the meanings given below:

"Access Drives and Ramps" means those elements of the Parking Facility and the Podiums identified as Access Drives and Ramps in Exhibit F-1 or Exhibit F-2 hereto.

"Affiliate" means, with respect to a corporation, limited liability company, partnership or other entity, another corporation, limited liability company, partnership or other entity controlled by, controlling or under common control with such corporation, limited liability company, partnership or other entity. For purposes of this definition, "control" means the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of ownership interests in the entity, by contract, or otherwise.

"Air Lot" means each of Lot 16B and Lot 26B. "Air Lots" means, collectively, Lot 16B and Lot 26B.

"Banks Construction Defect" means (a) any failure of any Banks Improvements to be constructed in a good and workmanlike manner, in compliance with all Legal Requirements and, as to those elements within the Public Parties' scope of review of the applicable Banks Plans pursuant to Section 2.5.2, without material deviation from such Banks Plans, to the extent, but only to the extent, that such failure would materially and adversely affect the structure or intended use and enjoyment of the Parking Property or any of the County Easements or the City Easements; and/or (b) any failure of any Parking-Related Elements of the Banks Property to be constructed in a good and workmanlike manner, in accordance with all Legal Requirements, and without material deviation from the applicable Banks Plans.

"Banks Design Change" means a change to any Banks Plans.

"Banks Design Documents" means, collectively, any design documents preliminary to the Banks Plans and any Banks Plans, as submitted by a Developer to the Public Parties pursuant to Section 2.5.2.

"Banks Improvements" has the meaning given in recital paragraph G.

"Banks Parking Facilities" has the meaning given in recital paragraph E.

"Banks Plans" means the working plans and specifications for the construction of any Banks Improvements, including the interfaces between the applicable Podium and such Banks Improvements, as the same may be changed by a Banks Design Change permitted pursuant to Section 2.9.2.

"Banks Property" has the meaning given in recital paragraph G.

"Banks Property Owner" means, with respect to any portion of the Banks Property, the owner of the fee simple interest in such portion of the Banks Property. As of the date of this Declaration, Phase 1A Developer is the Banks Property Owner with respect to the Phase 1A Lots and Phase 1B Developer is the Banks Property Owner with respect to the Phase 1B Lots. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed a Banks Property Owner with respect to the portion of the Banks Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagee from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

(b) a tenant or lessee of space in the Banks Property shall not be deemed a Banks Property Owner;

(c) if any portion of the Banks Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Banks Property Owner with respect to such portion of the Banks Property;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Banks Property shall not be deemed the Banks Property Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event a Banks Property Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such Persons shall, within 30 days after the date of their acquisition of any portion of the

and the City-Maintained Portion of the Lot 26 Podium is anticipated to be as depicted in Exhibit D-2 hereto. Consistent with the definition of each Podium, the City-Maintained Portion of each Podium excludes the Waterproofing System (other than Street Grid Expansion Joints) and the overlay sidewalk and any other overlay constructed on such Podium by a Developer.

"Commence" or "Commencement" means, in respect of any construction, the commencement of material construction activities.

"Commercial Delay Notice" means a Phase 1A Commencement Delay Notice or a Phase 1B Commencement Delay Notice.

"Completion" or "Complete" means (a) with respect to the Parking Facility, a Podium or any Banks Improvements, the stage in the progress of the construction of the Parking Facility, such Podium or such Banks Improvements, as applicable, as certified by the County's architect (with respect to the Parking Facility and the Podium) or the applicable Developer's architect (with respect to any Banks Improvements) when the Parking Facility, such Podium or such Banks Improvements, as applicable, or a designated portion thereof, are sufficiently complete consistent with the Parking Facility Plans, the Podium Plans or the Banks Plans, as applicable, so the County or such Developer, as applicable, can occupy and use the Parking Facility, such Podium or such Banks Improvements, as applicable, for their intended use, and (b) with respect to the Street Grid Improvements or the Utilities, the stage in the progress of the construction of the Street Grid Improvements or the Utilities, as applicable, as certified by the City's architect, when the Street Grid Improvements or the Utilities, as applicable, or a designated portion thereof, are sufficiently complete consistent with the Street Grid/Utility Plans so they can be used for their intended use.

"Completion Delay Notice" means a Phase 1A Completion Delay Notice or a Phase 1B Completion Delay Notice.

"Condominium Property" means any Development Lot consisting entirely of, or any portion of a Development Lot consisting of, a single condominium property, as defined in Section 5311.01(O), Ohio Revised Code.

"Condominium Unit" means a unit, as defined in Section 5311.01(BB), Ohio Revised Code.

"Construction Dispute" means a claim, dispute, disagreement or other issue in question between a Developer, on the one hand, and the City and/or the County, on the other hand, arising out of this Declaration and relating to the design or construction of the Parking Facility, the Podiums, the Street Grid Improvements, the Utilities, or any Banks Improvements.

"Construction Dispute Resolution Procedure" means the procedures for resolving Construction Disputes set forth in Section 2.12.

6

Banks Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Banks Property Owner as their designated agent to receive all notices and demands to be given to such Banks Property Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by such Banks Property Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Banks Property Owner for the purposes of exercising any rights of such Banks Property Owner under this Declaration. Such Persons comprising a Banks Property Owner may change their designated agent by written notice to the Parties, but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising such Banks Property Owner appointing and authorizing one of such Persons comprising such Banks Property Owner to act as attorney-in-fact pursuant to such power of attorney.

"Banks Property Permittee" means, with respect to any portion of the Banks Property, the Banks Property Owner, any manager engaged to manage such portion of the Banks Property, any owner of an individual condominium unit or cooperative ownership interest in such portion of the Banks Property, tenants and subtenants of such portion of the Banks Property, and their respective employees, agents, contractors, guests and invitees.

"Banks-Related Elements of the Parking Property" means those elements of the Parking Property identified in Exhibit C hereto.

"Carter" means Carter & Associates Commercial Services, L.L.C., a Georgia limited liability company.

"Casualty" means fire, flood, earthquake, windstorm, explosion or other casualty.

"Central Riverfront Park" means the public park designed and constructed, or to be designed and constructed, by or through the Cincinnati Park Board in the vicinity of the Air Lots.

"City" has the meaning given in the introductory paragraph of this Declaration.

"City Encumbrances" has the meaning given in Section 6.1.

"City-Maintained Portion" means, with respect to each Podium, the portion of such Podium below the waterproofing membrane between the public right-of-way for Freedom Way contiguous to the applicable Air Lot and the Private Expansion Joints within such Podium nearest to, and generally parallel to, such public right-of-way and including all parts of this applicable Street Grid Expansion Joints, but excluding any part of the applicable Private Expansion Joints. Based on the anticipated location of the Private Expansion Joints, the City-Maintained Portion of the Lot 16 Podium is anticipated to be as depicted in Exhibit D-1 hereto.

5

"Control Person" means each of Robert E. Peterson, James D. Shelton, R. Scott Taylor, A. Trent Gernamo, John E. Carter, Harold Dawson, Jr. and Jerome Hagley, the spouses and direct lineal descendants of Robert E. Peterson, James D. Shelton, R. Scott Taylor, A. Trent Gernamo, John E. Carter, Harold Dawson, Jr. and Jerome Hagley, any trust for the benefit of any of the foregoing persons, and, if the Public Parties have approved USAA as a Qualified Third Party Developer, USAA.

"County" has the meaning given in the introductory paragraph of this Declaration.

"County Exemptions" has the meaning given in Section 6.2.

"Cumulative Preferred Return" means, with respect to the Equity Investment in an Ownership Entry, a return of 10% per annum on such Equity Investment, cumulative and compounded monthly.

"Dawson" means Harold A. Dawson Co., Inc., a Georgia corporation.

"Dedicated Parking Costs" means the actual costs of designing and constructing the Dedicated Parking Spaces, including any Dedicated Parking Upgrade Costs. The Dedicated Parking Costs shall be the sum of (a) the amount determined by multiplying (i) the Parking Facility Costs, excluding any Dedicated Parking Upgrade Costs, by (ii) a fraction, the numerator of which is the number of Dedicated Parking Spaces in the Parking Facility and the denominator of which is the total number of parking spaces in the Parking Facility, plus (b) any Dedicated Parking Upgrade Costs.

"Dedicated Parking Spaces" means parking spaces in the Parking Facility located generally as depicted in Exhibit B hereto, the number of which shall be equal to: (a) the product of (i) the Private Parking Multiple multiplied by (ii) the number of Eligible Residential Units initially developed as part of the Banks Improvements (using the appropriate Private Parking Multiple based on the mix of Residential Apartment Units and Residential Condominium Units comprising such Eligible Residential Units), less (b) 200 (being the number of Developer Parking Spaces anticipated to be developed as part of the Banks Improvements); provided that the maximum number of Dedicated Parking Spaces shall be 300.

"Dedicated Parking Upgrade Costs" means the actual costs of designing and constructing upgrades made at Phase 1A Developer's request to the Dedicated Parking Spaces or to portions of the Parking Facility serving the Dedicated Parking Spaces, which upgrades are not made generally to the Parking Facility.

"Default Notice" has the meaning given in Section 12.1.

"Deferred Purchase Price" means, for any Development Asset, the Public Share of the Net Distributions of the Ownership Entry, payable as provided in Section 8.1.

"Developer" and **"Developer"** have the meanings given in the introductory paragraph of this Declaration.

"Developer Exemptions" has the meaning given in Section 6.1.

"Developer Parking Cost Cap" means \$16,000,000.

"Developer Parking Spaces" means parking spaces on or above the level of a Podium.

"Developer's Banks Improvements" means, (a) with respect to Phase 1A Developer, the Phase 1A Improvements, and (b) with respect to Phase 1B Developer, the Phase 1B Improvements.

"Developer's Banks Property" means, (a) with respect to Phase 1A Developer, the Phase 1A Banks Property, and (b) with respect to Phase 1B Developer, the Phase 1B Banks Property.

"Developer's Public Parking Contribution" has the meaning given in Section 2.6.4.

"Development Asset" means, as applicable: (a) any Development Lot which does not include, or that portion of any Development Lot other than, any Condominium Property, or (b) a Condominium Property, in either case including the Banks Improvements thereto.

"Development Deed" means each of (a) the deed by which the City conveyed the Phase 1A Lots to Phase 1A Developer contemporaneously with this Declaration, which has been filed for record in the Recorder's Office, Hamilton County, Ohio, prior to the filing of this Declaration for record, and (b) the deed by which the City conveyed the Phase 1B Lots to Phase 1B Developer contemporaneously with this Declaration, which has been filed for record in the Recorder's Office, Hamilton County, Ohio, prior to the filing of this Declaration for record.

"Development Lot" means: (a) each Phase 1A Lot that has not been subdivided; (b) each Phase 1B Lot that has not been subdivided; or (c) any lot created by a subdivision of a Phase 1A Lot or a Phase 1B Lot.

"Dist-Buying" means a distribution by the Ownership Entry of cash to the holders of the Equity Investment.

"Eligible Private Parking Spaces" means the lesser of: (a) the sum of the total number of Developer Parking Spaces and the total number of Dedicated Parking Spaces; and (b) the product of (i) the Private Parking Multiple multiplied by (ii) the number of Eligible Residential Units initially developed as part of the Banks Improvements (using the appropriate Private Parking Multiple based on the mix of Residential, Apartment Units and Residential Condominium Units comprising such Eligible Residential Units).

"Eligible Residential Units" means the actual number of Residential Units constructed within the Air Lots.

"Equity Investment" means, with respect to any Ownership Entity, the aggregate equity investment therein (or, if such Ownership Entity owns property other than its Development Asset, the aggregate equity investment in such Ownership Entity reasonably allocable to its Development Asset).

"Excusable Delay" means (a) with respect to the Phase 1A Commencement Deadline or the Phase 1A Completion Deadline, any period of time during which the Commencement, prosecution or Completion of the Phase 1A Improvements is delayed by a Force Majeure Event, and (b) with respect to the Phase 1B Commencement Deadline or the Phase 1B Completion Deadline, any period of time during which the Commencement, prosecution or Completion of the Phase 1B Improvements is delayed by a Force Majeure Event. In calculating the period of any Excusable Delay, due consideration shall be given to the effect, if any, that the delay of individual activities has had or will have on the time required to complete other activities.

"Force Majeure Event" means the following events or circumstances, but only (i) to the extent such event or circumstance is beyond the reasonable control of the Developer claiming Excusable Delay by reason thereof, (ii) to the extent the Developer claiming Excusable Delay by reason thereof shall have taken all reasonable precaution to prevent and minimize the effect of such delays by reason of such event or circumstance if such event or circumstance was actually known in advance by such Developer, and (iii) to the extent such event or circumstance is not caused by the fault or negligence of the Developer claiming Excusable Delay by reason thereof or any of its employees, agents or contractors: (a) acts of God, including, without limitation, floods, hurricanes, tornadoes and landslides; (b) fires or other casualties; (c) governmental moratoriums; (d) acts of a public enemy; civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; (f) condemnation or other exercise of the power of eminent domain; (g) the passage or enactment of, or the new interpretation or application of, any Legal Requirement; (h) delays beyond those expressly encountered in any approval process of any governmental authority; (i) restraint or any similar act by any governmental authority; (j) the act, failure to act, omission or neglect of the Public Parties, or either of them, or any employee, agent or other representative of the Public Parties, or either of them, or any separate contractor employed by the Public Parties, or either of them; (k) the failure by the Public Parties, or either of them, or any employee, agent or

other representative of the Public Parties, or either of them, to perform their duties and obligations under this Declaration or to act in a manner consistent with this Declaration; (l) the orders of any governmental authority having jurisdiction over the Developer claiming Excusable Delay by reason thereof or such Developer's portion of the Banks Property, other than orders arising from the regulatory approval or permitting process; (m) strikes, work stoppages or lockouts; (n) adverse weather conditions not reasonably anticipatable; (o) freight embargoes; (p) unusual and unanticipated delay in importations; (q) unavailability of, or unusual delay in the delivery of, fuel, power, supplies or materials; and (r) any other similar matter beyond the reasonable control of the Developer claiming Excusable Delay by reason thereof. Notwithstanding the foregoing, the lack of financial resources or any other financial condition affecting a Developer shall not constitute a Force Majeure Event.

"Foreclosure" means, without limitation: (a) the judicial foreclosure of a Mortgage; (b) the exercise of a power of sale contained in any Mortgage; (c) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; or (d) any action commenced or taken by a lender to regain possession or control of property leased under a salesleaseback.

"General Declaration" has the meaning given in Section 10.3.

"Ground Lot" and "Ground Lots" have the meanings given in recital paragraph D.

"Headhouses" means those elements of, or extending above, a Podium identified as Headhouses in Exhibit E-1 or Exhibit E-2 hereto.

"Infrastructure Contract" means any contract relating to the design and/or construction of Infrastructure Improvements.

"Infrastructure Improvements" means the Parking Facilities, the Street Grid Improvements, the Utilities and the Podium.

"Legal Requirements" means all applicable laws, statutes, ordinances, rules, regulations and requirements of governmental authorities, including, but not limited to, zoning and land use laws and building codes.

"Lot 16 Banks Property" means Lot 16B, the Lot 16 Podium and the Banks Improvements to Lot 16.

"Lot 16 Parking Property" has the meaning given in recital paragraph E.

"Lot 16 Podium" has the meaning given in recital paragraph F and includes the applicable Waterproofing System and expansion joints, but excluding any overlay constructed thereon by a Developer.

"Lot 16A" means Lot 16A of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

"Lot 16B" means Lot 16B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

"Lot 16B-1A" means that portion of Lot 16B depicted as Lot 16B-1A in Exhibit A-2 hereto and being more particularly described in Exhibit A-3 hereto, subject to revision as provided in Section 2.5.

"Lot 16B-1B" means that portion of Lot 16B depicted as Lot 16B-1B in Exhibit A-2 hereto and being more particularly described in Exhibit A-3 hereto, subject to revision as provided in Section 2.5.

"Lot 26 Banks Property" means Lot 26B, the Lot 26 Podium and the Banks Improvements to Lot 26.

"Lot 26 Parking Property" has the meaning given in recital paragraph 2.

"Lot 26 Podium" has the meaning given in recital paragraph F and includes the applicable Waterproofing System and expansion joints, but excluding any overlay constructed thereon by a Developer.

"Lot 26A" means Lot 26A of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

"Lot 26B" means Lot 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

"Lot 26B-1A" means that portion of Lot 26B depicted as Lot 26B-1A in Exhibit A-4 hereto and being more particularly described in Exhibit A-5 hereto, subject to revision as provided in Section 2.5.

"Lot 26B-1B" means that portion of Lot 26B depicted as Lot 26B-1B in Exhibit A-4 hereto and being more particularly described in Exhibit A-5 hereto, subject to revision as provided in Section 2.5.

"Master Developer" means Riverbanks Renaissance, LLC, a Delaware limited liability company.

"Master Development Agreement" means the Master Development Agreement dated November 23, 2007, among the County, the City and Master Developer, regarding the project commonly known as The Banks, of which the Grounds Lots and the Air Lots are a part, as amended by a First Amendment of Master Development Agreement dated January 22, 2008, by a Second Amendment of Master Development Agreement dated February 29, 2008, and by a Third Amendment of Master Development Agreement dated May 21, 2008, and as hereinafter amended from time to time.

"Master Development Plan" means that certain Concept Plan and Development Program Statement Amendment dated July 20, 2007, as amended by those items reflected on Exhibit N hereto, and as hereinafter modified in accordance with the terms of the Master Development Agreement.

"Minimum Phase 1A Improvements" means Phase 1A Improvements consisting of not less than 300 Residential Apartment Units (containing an aggregate of approximately 270,000 Square Feet), not less than 50,000 Square Feet of retail space, and approximately 200 Developer Parking Spaces.

"Minimum Phase 1B Improvements" means Phase 1B Improvements consisting of (a) on Lot 16B-1B, a "first class" hotel containing not less than 120 guest rooms or suites and/or Residential Condominium Units containing in the aggregate not less than 96,620 Square Feet, and (b) on Lot 26B-1B, an office building containing not less than 200,000 Square Feet; provided that Phase 1B Developer may, with the prior written approval of the Public Parties, not to be unreasonably withheld, change the product type and mix of product types constituting the Minimum Phase 1B Improvements, so long as the number of Square Feet of the Minimum Phase 1B Improvements is not reduced below 296,620.

"Minor Loss" means, with respect to a Parking Facility Segment or any Banks Improvements, damage which can reasonably be repaired within six months after commencement of the repair work.

"Mortgage" means (a) any encumbrance of any portion of the Banks Property as security for any indebtedness or other obligation of a Banks Property Owner or its successors and assigns, whether by mortgage, deed of trust, sale/leaseback, pledge, financing statement, security agreement, or other security instrument and (b) any encumbrance of the Parking Property as security for any indebtedness or other obligation of the Parking Property Owner or its successors and assigns, whether by mortgage, deed of trust, sale/leaseback, pledge, financing statement, security agreement, or other security instrument. However, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purposes of this Declaration, other than for purposes of Section 12.4.

"Mortgagee" means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or the heirs, legal representatives, successors, transferees and assigns of such initial holder.

"Net Distributions" means, for any Ownership Entity, the amount, if any, of Distributions in respect of the Equity Investment after the return of the Equity Investment and payment of the Cumulative Preferred Return (or, if the Ownership Entity owns property other than its Development Asset, the amount of such Distributions reasonably allocable to its Development Asset).

"Non-Allocated Portion" means those portions of each Podium, including, without limitation, the Private Expansion Joins, located between: (a) the building lines of the Banks Improvements to be constructed on such Podium and fronting the City rights-of-way, and (b) the City rights-of-way.

"Ownership Entity" means, with respect to each Development Asset, the applicable Developer or, if such Developer Transfers the Development Asset to an Affiliate of such Developer prior to the Completion of the Banks Improvements thereto as permitted under Section 9.2, such Affiliate of such Developer.

"Parking Agreement" means the First Amended and Restated Master Parking Facilities Operating and Easement Agreement dated on or about even date herewith by the County and Master Developer, recorded in Official Record Book _____, Page _____, Recorder's Office, Hamilton County, Ohio, as joined in by each Developer pursuant to a joinder agreement dated on or about even date herewith, to be recorded in the Recorder's Office, Hamilton County, Ohio, and as hereafter amended from time to time.

"Parking Facility" has the meaning given in recital paragraph E.

"Parking Facility Construction Defect" means (a) any failure of the Parking Facility to be constructed in a good and workmanlike manner, in compliance with all Legal Requirements and, as to those elements within a Developer's scope of review of the Parking Facility Plans pursuant to Section 2.2.3, without material deviation from the Parking Facility Plans, to the extent, but only to the extent, that such failure would materially and adversely affect the structure or intended use and operation of such Developer's Banks Improvements or the use and enjoyment of any of the Developer Easements for the benefit of such Developer or the rights and easements of such Developer under the Parking Agreement, and/or (b) any failure of the Banks-Related Elements of the Parking Property to be constructed in a good and workmanlike manner, in compliance with all Legal Requirements, and without material deviation from the Parking Plans.

"Parking Facility Costs" means the costs of designing and constructing the Parking Facility, including without limitation any insurance costs reasonably allocable thereto.

"Parking Facility Design Change" means a change to the Parking Facility Plans.

"Parking Facility Design Documents" means, collectively, any design documents preliminary to the Parking Facility Plans and any Parking Facility Plans, as identified in Exhibit J hereto (to the extent applicable to the Parking Facility) or Exhibit L hereto (to the extent applicable to the Parking Facility) or as submitted by the Public Parties to Developers pursuant to Section 2.2.4.

"Parking Facility Design Guidelines" has the meaning given in Section 2.2.2.

"Parking Facility Plans" means the working plans and specifications for the construction of the Parking Facility, including the interfaces between (a) the Parking Facility and each Podium, and (b) the Parking Facility and the Street Grid Improvements, as the same may be changed by a Parking Facility Design Change permitted pursuant to Section 2.6.2.

"Parking Facility Segment" means, as applicable, the portion of the Parking Facility located on and within Lot 16A or the portion of the Parking Facility located on and within Lot 26A.

"Parking Property" has the meaning given in recital paragraph E.

"Parking Property Owner" means the owner of the fee simple interest in the Parking Property. As of the date of this Declaration, the County is the Parking Property Owner. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed the Parking Property Owner with respect to the Parking Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagee from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through foreclosure;

(b) a tenant or lessee of space in the Parking Property shall not be deemed a Parking Property Owner;

(c) if the Parking Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Parking Property Owner;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Parking Property shall not be deemed the Parking Property Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event the Parking Property Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such Persons shall, within 30 days after the date of their acquisition of the Parking Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising the Parking Property Owner as their designated agent to receive all notices and demands to be given to the Parking Property Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by the Parking Property Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Parking Property Owner for the purposes of exercising any rights of the Parking Property Owner under this Declaration. Such Persons comprising the Parking Property Owner may change their designated agent by written notice to the Parties; but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising the Parking Property Owner appointing and authorizing one of such Persons comprising the Parking Property Owner to act as attorney-in-fact pursuant to such power of attorney.

"Parking Property Permitees" means each Parking Property Owner, any manager engaged to manage the Parking Property, tenants and subtenants of the Parking Property, and their respective employees, agents, contractors, guests, invitees and licensees.

"Parking-Related Elements of the Banks Property" means those elements of the Banks Property identified in Exhibit G hereto.

"Partial Loss" means, with respect to a Parking Facility Segment or any Banks Improvements, damages which cannot reasonably be repaired within six months after commencement of the repair work (i.e., more than a Minor Loss), but is not a Total Loss.

"Party" means each of the County, the City, Phase 1A Developer and Phase 1B Developer. "Parties" means, collectively, the County, the City, Phase 1A Developer and Phase 1B Developer.

"Passenger Elevator" means the Private Elevators, the Public Elevator and the Shared Elevator.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, joint stock company, trust, unincorporated association, institution, entity or governmental authority.

"Phase 1A Banks Property" means Banks Property consisting of or located as or within a Phase 1A Lot.

"Phase 1A Commencement Deadline" means the date 45 days after the Podium Turnover Date with respect to the Lot 26 Podium, subject to extension for Excusable Delay as provided in Section 2.9.5(a); provided, however, that the Podium Turnover Date with respect to the Lot 26 Podium shall not be earlier than October 23, 2009.

"Phase 1A Commencement Default" has the meaning given in Section 2.9.5(d).

"Phase 1A Commencement Delay Notice" has the meaning given in Section 2.9.5(d).

"Phase 1A Completion Deadline" means the later of (a) August 24, 2011, or (b) the date 24 months after the Phase 1A Commencement Deadline, subject to extension for Excusable Delay as provided in Section 2.9.6(a).

"Phase 1A Completion Default" has the meaning given in Section 2.9.6(b).

"Phase 1A Completion Delay Notice" has the meaning given in Section 2.9.6(b).

"Phase 1A Developer" has the meaning given in the introductory paragraph of this Declaration.

"Phase 1A Improvements" has the meaning given in recital paragraph G.

"Phase 1A Lot" and "Phase 1A Lots" have the meanings given in recital paragraph D.

"Phase 1B Banks Property" means Banks Property consisting of or located on or within a Phase 1B Lot.

"Phase 1B Commencement Deadline" means the earlier of (a) May 23, 2013, or (b) the date which is 18 months after Master Developer gives the first written notice to the Public Parties of Master Developer's determination under the Master Development Agreement to Commence construction on air lots other than a Phase 1A Lot or a Phase 1B Lot (a "Fall Air Lot Trigger Notice" as defined in the Master Development Agreement) which is not withdrawn and is no longer subject to withdrawal pursuant to the Master Development Agreement; subject to (i) extension for Excusable Delay as provided in Section 2.9.5(a); (ii) extension by Phase 1B Developer as provided in Section 2.9.5(e); and (iii) elimination as provided in Section 2.9.7(b).

"Phase 1B Commencement Default" has the meaning given in Section 2.9.5(e).

"Phase 1B Commencement Delay Notice" has the meaning given in Section 2.9.5(c).

"Phase 1B Completion Deadline" means the date which is three years after the Phase 1B Commencement Deadline; subject to: (a) extension for Excessible Delay as provided in Section 2.9.6(a); and (b) adjustment as provided in Section 2.9.7(b).

"Phase 1B Completion Deadline" has the meaning given in Section 2.9.6(c).

"Phase 1B Completion Delay Notice" has the meaning given in Section 2.9.6(c).

"Phase 1B Contingencies" has the meaning given in Section 2.9.5(b).

"Phase 1B Developer" has the meaning given in the introductory paragraph of this Declaration.

"Phase 1B Improvements" has the meaning given in recital paragraph C.

"Phase 1B Lot" and "Phase 1B Lots" have the meanings given in recital paragraph D.

"Podium" and "Podiums" have the meanings given in recital paragraph F.

"Podium Construction Contract" means each contract for the performance of construction services or for the furnishing of labor, materials or equipment for construction which includes the construction of a Podium.

"Podium Construction Defect" means any failure of a Podium to be constructed in a good and workmanlike manner, in accordance with all Legal Requirements and without material deviation from the Podium Plans.

"Podium Costs" means the costs of designing and constructing the Podiums, including without limitation any insurance costs reasonably allocable thereto.

"Podium Design Change" means a change to the Podium Plans.

"Podium Design Contract" means each contract for design services which include the design of a Podium.

"Podium Design Documents" means any design documents preliminary to the Podium Plans and any Podium Plans, as identified in Exhibit I hereto (to the extent applicable to

a Podium) or Exhibit J hereto (to the extent applicable to a Podium) or as submitted by the County to Developers pursuant to Section 2.3.5.

"Podium Design Guidelines" has the meaning given in Section 2.3.3.

"Podium Plans" means the working plans and specifications for the construction of the Podiums, including the interfaces between (a) the Podiums and the Parking Facility; (b) the Podiums and the Street Grid Improvements; (c) the Podiums and any elements of the Banks Improvements intended to be integrated with the Parking Facility through the Podiums; (d) the Lot 26 Podium and the Transit Center; and (e) the Lot 16 Podium and the Central Riverfront Park, as the same may be changed by a Podium Design Change permitted pursuant to Section 2.7.2.

"Podium Takeover Date" means, with respect to each Podium, the first date as of which the County has delivered such Podium, or a designated portion thereof (such Podium, or designated portion thereof, being called the "Delivered Portion"), to Phase 1A Developer and the County certifies to Phase 1A Developer that all of the following conditions have been satisfied:

(a) if the Delivered Portion consists of less than the entire Podium, the Delivered Portion contains not less than 20,000 square feet; (b) the construction of the Delivered Portion has been completed, without material deviation from the Podium Plans, to the point that construction of the Phase 1A Improvements can reasonably Commence thereon, consistent with good construction practices; (c) the Delivered Portion has been cleared of all equipment, tools and construction debris and is in a condition such that construction of the Phase 1A Improvements can reasonably Commence thereon consistent with good construction practices; (d) if the Delivered Portion consists of less than the entire Podium, then, based on the construction schedule for the Phase 1A Improvements to be constructed on such Podium submitted by Phase 1A Developer and the construction schedule for the remainder of such Podium, Phase 1A Developer will be able to pursue construction of such Phase 1A Improvements without material interruption from the ongoing construction of such Podium.

"Prime Rate" means the prime rate published in the "Money Rates" section of the Wall Street Journal from time to time.

"Principal" means each of: (a) Carter; (b) Dawson; and (c) USAA.

"Private Elevators" means those elements of the Parking Facility and the Podiums identified as Private Elevators in Exhibit F-1 or Exhibit F-2 hereto.

"Private Expansion Joints" means the expansion joints within the Podiums anticipated to be located approximately one foot from the face of the proposed Banks Improvements, depicted as Private Expansion Joints in Exhibit D-1 and Exhibit D-2 hereto.

"Private Parking Multiplier" means: (a) 1.6 for each Residential Condominium Unit, and (b) 1.425 for each Residential Apartment Unit.

"Private Parking Spaces" means, collectively, the Developer Parking Spaces and the Dedicated Parking Spaces.

"Public Elevator" means that element of the Parking Facility and the Lot 26 Podium identified as Public Elevator in Exhibit E-2 hereto.

"Public Party" and **"Public Parties"** have the meanings given in the introductory paragraph of this Declaration.

"Public Share" means fifteen percent (15%).

"Public Parties' Instrumental Share" means a percentage of the estimated Podium Costs determined in accordance with Section 2.7.5(a) by dividing (a) the portion of the estimated Podium Costs attributable to the City's requirement that the Non-Allocated Portion of each Podium be built to bear loads in excess of standard pedestrian sidewalk loads, including, without limitation, loads to accommodate emergency vehicles (that is, the estimated incremental cost to build the Non-Allocated Portion of such Podium to bear such excess loads, compared to the estimated cost to build the Non-Allocated Portion of such Podium if such excess loads were not required), by (b) the estimated Podium Costs.

"Qualified Sale" means: (a) for any Development Asset which is not a Condominium Property, a bona fide, arms' length sale of the fully developed Development Asset by the Ownership Entity to a third party which is not an Affiliate of the Ownership Entity; and (b) for any Condominium Unit, a bona fide, arms' length sale of the Condominium Unit by the Ownership Entity to a third party which is not an Affiliate of the Ownership Entity.

"Qualified Third Party Developer" means a commercial real estate developer which is not an Affiliate of Carter or Dawson and is approved in writing (or deemed approved) by the Public Parties as a Qualified Third Party Developer pursuant to Section 9.2.3.

"Reimbursable Private Parking Costs" means: (a) with respect to Eligible Private Parking Spaces which are Developer Parking Spaces, the lesser of (i) the actual costs of designing and constructing such Developer Parking Spaces (including without limitation any insurance costs, construction period interest costs and other financing costs and expenses reasonably allocable thereto) and (ii) the product of (A) the number of such Developer Parking Spaces multiplied by (B) the Developer Parking Cost Cap; and (b) with respect to Eligible Private Parking Spaces which are Dedicated Parking Spaces, the Dedicated Parking Costs less the Dedicated Parking Upgrade Costs.

"Residential Apartment Unit" means a residential unit constructed as part of the Banks Improvements initially for rental.

"Residential Condominium Unit" means a residential unit constructed as part of the Banks Improvements initially for sale.

"Residential Unit" means a residential unit, whether a Residential Apartment Unit or a Residential Condominium Unit, constructed as part of the Banks Improvements.

"Service Agreement" means each of (a) the Service Agreement dated on or about even date herewith by the City and Phase 1A Developer with respect to Lot 16B-1A, to be recorded in the Recorder's Office, Hamilton County, Ohio, (b) the Service Agreement dated on or about even date herewith by the City and Phase 1A Developer with respect to Lot 26B-1A, to be recorded in the Recorder's Office, Hamilton County, Ohio, (c) the Service Agreement dated on or about even date herewith by the City and Phase 1B Developer with respect to Lot 16B-1B, to be recorded in the Recorder's Office, Hamilton County, Ohio, and (d) the Service Agreement dated on or about even date herewith by the City and Phase 1B Developer with respect to Lot 26B-1B, to be recorded in the Recorder's Office, Hamilton County, Ohio.

"Shared Elevator" means that element of the Parking Facility and the Lot 26 Podium identified as Shared Elevator in Exhibit E-2 hereto.

"Square Foot", **"Square Footage"** and similar terms mean: (a) with respect to office space, square feet of rentable area according to the Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-2006; (b) with respect to retail space, square feet of interior floor area designed for tenant occupancy and exclusive use, including "selling" basement space (but excluding "non-selling" basement space), "selling" mezzanine space (but excluding "non-selling" mezzanine space), and "selling" upper floor space (but excluding "non-selling" upper floor space), and excluding outdoor patio/sidewalk space ("selling" space relating to space used for the sale of goods or merchandise directly to customers, for the rendering of services directly to customers, and for any other intended use directly by customers; and "non-selling" space referring to space not intended for such uses, such as storage space); (c) with respect to Residential Apartment Units, square feet of floor area designed for tenant occupancy and exclusive use, excluding basements and balconies; (d) with respect to Residential Condominium Units, square feet of floor area within Residential Condominium Units, including balconies which are limited common areas; and (e) with respect to hotel space, square feet of interior floor area.

"Stairwell" means those elements of the Parking Facility and the Podiums or the Street Grid Improvements identified as Stairwells in Exhibit E-1 or Exhibit E-2 hereto.

"Street Grid Expansion Joints" means the expansion joints within the Podiums serving the Street Grid Improvements, depicted as Street Grid Expansion Joints in Exhibit D-1 and Exhibit D-2 hereto.

"Street Grid Improvements" has the meaning given in recital paragraph H.

"Street Grid/Utility Construction Defect" means any failure of the Street Grid Improvements or the Utilities to be constructed and installed in a good and workmanlike manner, in accordance with all legal requirements and, as to those elements within the County's or a Developer's scope of review of the Street Grid/Utility Plans pursuant to Section 2.4.1, without material deviation from the Street Grid/Utility Plans, to the extent, but only to the extent, that such failure would materially and adversely affect the intended use and operation of the Parking Facility or such Developer's Banks Improvements.

"Street Grid/Utility Design Change" means a change to the Street Grid/Utility Plans.

"Street Grid/Utility Design Documents" means, collectively, any design documents preliminary to the Street Grid/Utility Plans and any Street Grid/Utility Plans, as identified in Exhibit J hereto or as submitted by the City to Developers and the County pursuant to Section 2.4.4.

"Street Grid/Utility Design Guidelines" has the meaning given in Section 2.4.2.

"Street Grid/Utility Plans" means the working plans and specifications for the construction and installation of the Street Grid Improvements and the Utilities, as the same may be changed by a Street Grid/Utility Design Change permitted pursuant to Section 2.4.2.

"Structural Load Information" means the information with respect to the anticipated structural loads of the Banks Improvements furnished by Developers to the County as the basis for the design of the Parking Facility and the Podiums, as identified in Exhibit H hereto.

"Total Loss" means, with respect to a Parking Facility Segment or any Banks Improvements, total destruction or such material damage that it would be inappropriate or impractical to rebuild or restore such Parking Facility Segment or such Banks Improvements, as applicable, without demolishing the remaining portion of such Parking Facility Segment or such Banks Improvements, as applicable. Because of the fact that each Parking Facility Segment will provide support for the Banks Improvements above such Parking Facility Segment, any Total Loss with respect to a Parking Facility Segment will also constitute a Total Loss with respect to the Banks Improvements above such Parking Facility Segment. However, a Total Loss with respect to any Banks Improvements will not necessarily constitute a Total Loss with respect to the Parking Facility Segment below such Banks Improvements.

"Transfer" means, as a noun, sale, assignment, conveyance or other transfer, and, as a verb, sell, assign, convey or transfer.

"Transit Center" means the intermodal transit center located below Second Street extending from Broadway Street westwardly to Central Avenue.

"USAA" means USAA Real Estate Company, a Delaware corporation.

"Utilities" has the meaning given in recital paragraph H.

"Ventilation Shafts" means those elements identified as Ventilation Shafts in Exhibit F-1 or Exhibit F-2 hereto, intended to extend through and above a Podium to intake air and vent exhaust from the Parking Facility.

"Waterproofing System" means the waterproofing membrane(s) and/or drainage system and other related components to be constructed and installed as part of each Podium.

ARTICLE 2 DESIGN AND CONSTRUCTION

2.1 Approved Design Documents. Exhibit J hereto is intended to identify the Parking Facility Design Documents and the Podium Design Documents that, as of the date of this Declaration, are approved by the Parties. The various design documents identified in Exhibit J hereto are Parking Facility Design Documents (to the extent applicable to the Podiums only), or both Parking Facility Design Documents and Podium Design Documents (to the extent applicable to both the Parking Facility and the Podiums). Exhibit J hereto is intended to identify the Street Grid/Utility Design Documents that, as of the date of this Declaration, are approved by the Parties. However, certain of the design documents identified in Exhibit J hereto relate also to the Parking Facility and/or the Podiums, and are Parking Facility Design Documents and/or Podium Design Documents, as applicable, in addition to being Street Grid/Utility Design Documents. Therefore: (a) the Parking Facility Design Documents approved by the Parties as provided in Section 2.2 consist of those of the design documents identified in Exhibit J and Exhibit L hereto that are Parking Facility Design Documents; (b) the Podium Design Documents approved by the Parties as provided in Section 2.3 consist of those of the design documents identified in Exhibit J and Exhibit L hereto that are Podium Design Documents; and (c) the Street Grid/Utility Design Documents approved by the Parties as provided in Section 2.4 consist of the design documents identified in Exhibit J hereto.

2.2 Design of Parking Facility

2.2.1 Approval of Existing Parking Facility Design Documents. The Parties, by their execution of this Declaration, approve the Parking Facility Design Documents identified

in Exhibit I or Exhibit J hereto. To the extent that such approved Parking Facility Design Documents do not constitute the complete Parking Facility Plans, the Parking Facility Plans shall be developed on the basis of such approved Parking Facility Design Documents in accordance with Sections 2.2.2 - 2.2.5.

2.2.2 Parking Facility Design Guidelines. The design guidelines for the Parking Facility (the "Parking Facility Design Guidelines") shall be as follows:

(a) The design of the Parking Facility shall be consistent with, and to the same standards as, the design of those portions of the Banks Parking Facilities that have been constructed or are under construction as of the date of this Declaration, and shall provide for the integration of the Parking Facility with the Banks Parking Facilities as a single parking facility.

(b) The design of the Parking Facility shall include appropriate interfaces with: (i) each Podium; (ii) the existing street grid; (iii) the Street Grid Improvements; (iv) the Utilities; (v) any elements of the Banks Improvements intended to be integrated with the Parking Facility through a Podium; (vi) those portions of the Banks Parking Facilities constructed or to be constructed adjacent to the Parking Facility; and (vii) the Transit Center. The interfaces between the Parking Facility and each Podium shall include, but are not limited to, the Access Drives and Ramps, the Passenger Elevators, the Stairwells and the Ventilated Shafts.

(c) The Parking Facility shall be designed in compliance with Legal Requirements.

(d) The Parking Facility shall provide adequate support for the Podiums and the Banks Improvements anticipated to be constructed above the Parking Facility, based on the Structural Load Information.

(e) The Parking Facility shall, to the extent applicable, provide adequate support for the Street Grid/Utility Improvements to be constructed within the rights-of-way adjacent to an Air Lot.

(f) The Parking Facility shall accommodate the bottom of each Podium at or slightly above the property line between the applicable Ground Lot and the applicable Air Lot, such that each Podium will be wholly within the applicable Air Lot.

2.2.3 Design Requirements. The Parties have approved the Parking Facility Design Documents identified in Exhibit I or Exhibit J hereto. To the extent that such approved Parking Facility Design Documents do not constitute the complete Parking Facility Plans, the County, in consultation with Developers and the City, shall cause to be prepared and shall submit to Developers and the City for review and approval the Parking Facility Plans, which shall be consistent with the Parking Facility Design Guidelines. In the process of developing the Parking Facility Plans, the County may cause to be prepared and may

submit to Developers and the City for review and approval schematic design documents, design development documents and other design documents for the Parking Facility preliminary to the Parking Facility Plans. Each Developer's scope of review in considering the Parking Facility Design Documents shall be limited to the following: (a) the consistency of the Parking Facility Design Documents with the Parking Facility Design Guidelines; (b) the location and design of (i) the features of the Parking Property subject to the Developer Easements for the benefit of such Developer, including but not limited to the elements of the Parking Property intended to provide structural support for the Podiums and the Banks Improvements, and (ii) the Banks-Related Elements of the Parking Property; (c) any Dedicated Parking Spaces within the Parking Facility; and (d) those elements of the Parking Property related to the exercise, use and enjoyment of such Developer's rights and easements under the Parking Agreement. The City's scope of review in considering the Parking Facility Design Documents shall be limited to the interfaces of the Parking Facility with the existing street grid, the Street Grid Improvements, the Utilities and the Transit Center, and to the Parking Facility Costs. Review and approval of the Parking Facility Design Documents by Developers and the City pursuant to this Declaration shall not relieve the County from responsibility for causing the Parking Facility to be designed in compliance with Legal Requirements and as required by this Declaration and for assuring that the Parking Facilities, when constructed in accordance with the Parking Facility Plans, will be in compliance with Legal Requirements and will provide adequate support for the Podiums and the Banks Improvements anticipated to be constructed above the Parking Facilities based on the Structural Load Information, and none of Developers or the City shall have any liability by reason of this Declaration for any Parking Facility Plans which are inconsistent with Legal Requirements or otherwise defective.

2.2.4 Review and Approval of Parking Facility Design Documents. In reviewing any Parking Facility Design Documents (other than those identified in Exhibit I or Exhibit J hereto, which the Parties have approved), Developers and the City shall be limited to their respective scopes of review as provided in Section 2.2.3 and shall consider their respective prior approvals of Parking Facility Design Documents. Within ten business days after the County submits to a Developer or the City proposed Parking Facility Design Documents, together with a written notice in the form attached hereto as Exhibit Q-1 stating that such Parking Facility Design Documents are being submitted for approval, such Developer or the City, as applicable, shall, by written notice to the County, approve or disapprove the same. None of Developers or the City will unreasonably withhold, condition or delay approval of proposed Parking Facility Design Documents, and in any disapproval each Developer or the City, as applicable, shall specify in reasonable detail the respects (consistent with the disapproving Party's scope of review) in which the Parking Facility Design Documents are not satisfactory and the changes necessary for the Parking Facility Design Documents to be satisfactory. Without limiting the discretion of Developers or the City in considering Parking Facility Design Documents, any disapproval of proposed Parking Facility Design Documents on the basis of inconsistency with the Parking Facility Design Guidelines shall be considered to be reasonable. After receiving any reasonable notice of disapproval from a Developer or the City with respect to proposed Parking Facility Design Documents (consistent with the disapproving Party's scope of

review), the County will cause the same to be revised as reasonably requested by such Party and will resubmit the revised Parking Facility Design Documents to Developers and the City for review and approval in accordance with the procedures set forth above. The Parking Facility Plans shall not be changed after approval by Developers and the City, other than by a Parking Facility Design Change permitted pursuant to Section 2.6.2.

2.2.5 Timing. The County shall cause the Parking Facility to be designed in accordance with Sections 2.2.2 - 2.2.4 with commercially reasonable diligence from and after the date of this Declaration in order that construction of the Parking Facility can commence without unreasonable delay.

2.2.6 Parking Overbuild Costs. The County shall cause each Parking Facility Segment to be designed to provide adequate support for the Podium and the Banks Improvements anticipated to be constructed above such Parking Facility Segment, based on the Structural Load Information. Each Developer shall consult with, and shall cause such Developer's design professionals to consult with, the County and the County's design professionals to facilitate the efficient design and construction of each Parking Facility Segment consistent with the Structural Load Information. If (a) after the design of a Parking Facility Segment has been completed on the basis of the Structural Load Information, a Developer designs or otherwise changes its Banks Improvements to be constructed above such Parking Facility Segment to reduce the structural loads of such Banks Improvements to less than 90% of those provided for in the Structural Load Information, and (b)(i) the amount that the Overbuild Support Costs (as defined below in this Section 2.2.6) for such Parking Facility Segment would reasonably have been if such Parking Facility Segment had been designed and constructed to accommodate 90% of the structural loads provided for in the Structural Load Information exceeds (ii) the amount that the Overbuild Support Costs for such Parking Facility Segment would reasonably have been if such Parking Facility Segment had been designed and constructed to accommodate the structural loads of the subject Banks Improvements as constructed (the amount of such excess being called the "Excess Costs"), then, notwithstanding any other provisions of this Declaration to the contrary, and in addition to any other Parking Facility Costs for which such Developer is responsible as provided in this Declaration, such Developer shall be responsible for two-thirds of the Excess Costs. Upon receipt of written notice by the County from a Developer of a material reduction in the structural loads of its Banks Improvements as described above, the County shall take all reasonable steps with respect to the redesign of the Parking Facility and/or the modification of the construction of the Parking Facility to minimize the responsibility of such Developer for costs pursuant to this Section 2.2.6, provided that such Developer shall pay or reimburse the County for the reasonable costs of such redesign under modification. As used herein, "Overbuild Support Costs" means, with respect to each Parking Facility Segment, the amount by which (i) the Parking Facility Costs for such Parking Facility Segment, designed and constructed to support the Banks Improvements to be constructed above such Parking Facility Segment, exceeds (ii) the amount that the Parking Facility Costs for such Parking Facility Segment would reasonably be if it were designed and constructed without regard to the need to support any Banks Improvements.

2.3 Design of Podiums

2.3.1 Approval of Existing Podium Design Documents. The Parties, by their execution of this Declaration, approve the Podium Design Documents identified in Exhibit J or Exhibit L hereto. To the extent that such approved Podium Design Documents do not constitute the complete Podium Plans, the Podium Plans shall be developed on the basis of such approved Podium Design Documents in accordance with Sections 2.3.2 - 2.3.7.

2.3.2 General. Although each Podium will be within an Air Lot and will be part of the Bank's Property, Developers and the County desire to achieve efficiency by having the Parking Facility and the Podiums designed as a single integrated project. Therefore, the County shall, subject to reimbursement by Developers as provided in Section 2.7.5, cause the Podiums to be designed as an integrated project with the Parking Facility.

2.3.3 Podium Design Guidelines. The design guidelines for the Podiums (the "Podium Design Guidelines") shall be as follows:

(a) The design of the Podiums shall include appropriate interfaces with: (i) the Parking Facility; (ii) the existing street grid; (iii) the Street Grid Improvements; (iv) the Utilities; (v) the Banks Improvements anticipated to be constructed above the Podiums; (vi) the Transit Center; and (vii) the Central Riverfront Park. The interfaces between each Podium and the Parking Facility shall include, but are not limited to, the Access Drives and Ramps, the Passenger Elevators, the Stairwells, the Headhouses and the Ventilation Shafts.

(b) The Podiums shall be designed in compliance with Legal Requirements.

(c) Each Podium shall be adequately supported by the Parking Facility, and, together with the Parking Facility, shall provide adequate support for the Banks Improvements anticipated to be constructed above such Podium, based on the Structural Load Information.

(d) The bottom of each Podium shall be at or slightly above the property line between the applicable Ground Lot and the applicable Air Lot, such that each Podium will be wholly within the applicable Air Lot.

(e) Each Podium shall include a Waterproofing System, except (i) in such locations as do not reasonably require waterproofing protection in light of the planned Banks Improvements to be constructed above the Podiums, and (ii) at the County's election, within any portions of the Access Drives and Ramps.

(f) The Podiums shall accommodate appropriate utility distribution systems and branch lines to serve the Building Improvements.

2.3.4 Design Responsibility, Scope of Review. The Parties have approved the Podium Design Documents identified in Exhibit I or Exhibit J hereto. To the extent that such approved Podium Design Documents do not constitute the complete Podium Plans, the County, in consultation with Developers and the City, shall cause to be prepared and shall submit to Developers and the City for review and approval the Podium Plans, which shall be consistent with the Podium Design Guidelines. In the process of developing the Podium Plans, the County may cause to be prepared and may submit to Developers and the City for review and approval schematic design documents, design development documents and other design documents for the Podiums preliminary to the Podium Plans. The City's scope of review in considering the Podium Design Documents shall be limited to the interfaces of the Podiums with the existing street grid, the Street Grid Improvements, the Utilities, the Transit Center and the Central Riverfront Park. Each Developer's scope of review considering the Podium Design Documents shall not be limited in any respect. Upon approval of the Podium Plans by a Developer, the County shall have no liability to such Developer for any Podium Plans which are inconsistent with Legal Requirements or otherwise defective, other than as provided in Section 2.3.6.

2.3.5 Review and Approval of Podium Design Documents. In reviewing any Podium Design Documents (other than those identified in Exhibit I hereto, which the City has approved), the City shall be limited to its scope of review as provided in Section 2.3.4, and Developers and the City shall consider their respective prior approvals of Podium Design Documents. Within ten business days after the County submits to a Developer or the City proposed Podium Design Documents, together with a written notice in the form attached hereto as Exhibit O-2 stating that such Podium Design Documents are being submitted for approval, such Developer or the City, as applicable, shall, by written notice to the County, approve or disapprove the same. None of Developers or the City will unreasonably withhold, condition or delay approval of proposed Podium Design Documents, and in any disapproval each Developer or the City, as applicable, shall specify in reasonable detail the respects (as to the City, consistent with its scope of review) in which the Podium Design Documents are not satisfactory and the changes necessary for the Podium Design Documents to be satisfactory. Without limiting the discretion of Developers or the City in considering Podium Design Documents, any disapproval of proposed Podium Design Documents on the basis of inconsistency with the Podium Design Guidelines shall be considered to be reasonable. After receiving any reasonable notice of disapproval from a Developer or the City with respect to proposed Podium Design Documents (as to the City, consistent with its scope of review), the County will cause the same to be revised as reasonably requested and will resubmit the revised Podium Design Documents to Developers and the City for review and approval in accordance with the procedures set forth above. The Podium Plans shall not be changed after approval by Developers and the City, other than by a Podium Design Change permitted by Section 2.7.2.

2.3.6 Design Contracts. Each Podium Design Contract shall be subject to the approval of Developers, which approval shall not be unreasonably withheld. The County shall cause each Podium Design Contract (a) to require the Podiums to be designed in compliance with Legal Requirements and as required by this Declaration; (b) to require the design professional to assure that the Podiums, when constructed in accordance with the Podium Plans, will be in compliance with Legal Requirements and will provide adequate support for the Banks Improvements to be constructed above the Podiums, based on the Structural Load Information; (c) to provide that each Developer is an intended third party beneficiary hereunder and, as such, (i) shall be entitled to rely upon and directly enforce the duties, obligations, liabilities and responsibilities of the design professional hereunder, (ii) shall be entitled to all legal and equitable remedies against the design professional as if it were the other contracting party hereunder, and (iii) shall have a right to rely on all representations and warranties of the design professional hereunder; and (d) to require that all liability insurance (other than professional liability insurance and worker's compensation insurance) maintained by the design professional pursuant hereto shall name such Developer as an additional insured and that all waivers of subrogation by the design professional and its insurers hereunder shall be for the benefit of such Developer. At the request of a Developer, the County shall cooperate with such Developer in enforcing each design professional's duties, obligations, liabilities and responsibilities under each Podium Design Contract. The County agrees, for the benefit of Developers (1) to fully and completely perform and satisfy the County's duties, obligations, liabilities and responsibilities under each Podium Design Contract, including, without limitation, those relating to the payment of all fees, costs, other compensation and other amounts payable to the design professional hereunder; (2) not to take any action, and not to omit to take any action, that causes the contracting design professional's duties, obligations, liabilities or responsibilities under each Podium Design Contract, or the legal and equitable remedies against the design professional hereunder, to be diminished, affected, impaired or waived in any manner whatsoever; and (3) to be liable and responsible to each Developer for any loss, cost or damage suffered, incurred or sustained by such Developer to the extent arising out of or by reason of the County's breach of the foregoing clause (1) or (2).

2.3.7 Timing. The County shall cause each Podium to be designed in accordance with Sections 2.3.1, 2.3.4 and 2.3.5 on a schedule that will permit the construction of each Podium in coordination with the construction of the Parking Facility.

2.4 Design of Street Grid Improvements and Utilities

2.4.1 Approval of Existing Street Grid/Utility Design Documents. The Parties, by their execution of this Declaration, approve the Street Grid/Utility Design Documents identified in Exhibit I hereto. To the extent that such approved Street Grid/Utility Design Documents do not constitute the complete Street Grid/Utility Design Documents, the Street Grid/Utility Plans shall be developed on the basis of such approved Street Grid/Utility Design Documents in accordance with Sections 2.4.2 - 2.4.4.

2.4.2 Street Grid/Utility Design Guidelines. The design guidelines for the Street Grid Improvements and the Utilities (the "Street Grid/Utility Design Guidelines") shall be as follows:

- (a) The design of the Street Grid Improvements shall be consistent with, and to the same standards as, the design of the existing street grid in the vicinity of the Banks Property.
- (b) The design of the Street Grid Improvements shall include appropriate interfaces with: (i) the Parking Facility; (ii) the Pedlars; (iii) the existing street grid; (iv) the Utilities; and (v) the Private Expansion Joints.
- (c) The design of the Utilities shall include appropriate interfaces with: (i) the Parking Facility; (ii) the Street Grid Improvements; (iii) the existing street grid; and (iv) the Pedlars.
- (d) The Street Grid Improvements and the Utilities shall be designed in compliance with Legal Requirements.
- (e) The Street Grid Improvements shall include a waterproofing system.

2.4.3 Design Responsibility Scope of Review. The Parties have approved the Street Grid/Utility Design Documents identified in Exhibit J hereto. To the extent that such approved Street Grid/Utility Design Documents do not constitute the complete Street Grid/Utility Plans, the City, in consultation with Developers and the County, shall cause to be prepared and shall submit to Developers and the County for review and approval the Street Grid/Utility Plans, which shall be consistent with the Street Grid/Utility Design Guidelines. In the process of developing the Street Grid/Utility Plans, the City may cause to be prepared and may submit to Developers and the County for review and approval schematic design documents, design development documents and other design documents for the Street Grid Improvements and the Utilities preliminary to the Street Grid/Utility Plans. Each Developer's scope of review in considering the Street Grid/Utility Design Documents shall be limited to the consistency of the Street Grid/Utility Design Documents with the Street Grid/Utility Design Guidelines. The County's scope of review in considering the Street Grid/Utility Design Documents shall be limited to the interfaces of the Street Grid Improvements and Utilities with the Parking Facility and the Pedlars, the waterproofing system in the Street Grid Improvements, the Street Grid Expansion Joints and the costs of the Street Grid Improvements and Utilities. Review and approval of the Street Grid/Utility Design Documents by Developers and the County pursuant to this Declaration shall not relieve the City from responsibility for causing the Street Grid Improvements and the Utilities to be designed in compliance with Legal Requirements and as required by this Declaration and for assuring that the Street Grid Improvements and the Utilities, when constructed in accordance with the Street Grid/Utility Plans, will be in compliance with

Legal Requirements, and none of Developers or the County shall have any liability by reason of this Declaration for any Street Grid/Utility Plans which are inconsistent with Legal Requirements or otherwise defective.

2.4.4 Review and Approval of Street Grid/Utility Design Documents. In reviewing any Street Grid/Utility Design Documents (other than those identified in Exhibit J hereto, which the Parties have approved), Developers and the County shall be limited to their respective scopes of review as provided in Section 2.4.3 and shall consider their respective prior approvals of Street Grid/Utility Design Documents. Within ten business days after the City submits to a Developer or the County proposed Street Grid/Utility Design Documents, together with a written notice in the form attached hereto as Exhibit Q-3 stating that such Street Grid/Utility Design Documents are being submitted for approval, such Developer or the County, as applicable, shall, by written notice to the City, approve or disapprove the same. None of Developers or the County will unreasonably withhold, condition or delay approval of proposed Street Grid/Utility Design Documents, and in any disapproval each Developer or the County, as applicable, shall specify in reasonable detail the respects (consistent with the disapproving Party's scope of review) in which the Street Grid/Utility Design Documents are not satisfactory, and the changes necessary for the Street Grid/Utility Design Documents to be satisfactory. Without limiting the discretion of Developers or the County in considering Street Grid/Utility Design Documents, any disapproval of proposed Street Grid/Utility Design Documents on the basis of inconsistency with the Street Grid/Utility Design Guidelines shall be considered to be reasonable. After receiving any reasonable notice of disapproval from a Developer or the County with respect to proposed Street Grid/Utility Design Documents (consistent with the disapproving Party's scope of review), the City will cause the same to be revised as reasonably requested by such Party and will resubmit the revised Street Grid/Utility Design Documents to Developers and the County for review and approval in accordance with the procedures set forth above. The Street Grid/Utility Plans shall not be changed after approval by Developers and the County, other than by a Street Grid/Utility Design Change permitted pursuant to Section 2.8.2.

2.5 Design of Brakes Improvements. Phase 1A Developer shall design the Phase 1A Improvements, and Phase 1B Developer shall design the Phase 1B Improvements, in accordance with the following provisions of this Section 2.5. The Public Parties acknowledge that, in the course of designing the Phase 1A Improvements and the Phase 1B Improvements, Developers may determine to relocate the boundary lines between a Phase 1A Lot and the adjacent Phase 1B Lot to accommodate the Phase 1A Improvements and the Phase 1B Improvements as designed within such Phase 1A Lot and Phase 1B Lot. The Public Parties agree that, subject to compliance with Legal Requirements, Developers may so relocate the boundary lines between a Phase 1A Lot and the adjacent Phase 1B Lot as determined by Developers, so long as, after such relocation of the boundary lines, the Phase 1A Lots and the Phase 1B Lots will reasonably accommodate the Minimum Phase 1A Improvements and the Minimum Phase 1B Improvements, respectively. The Public Parties further agree to cooperate with Developers, at no out-of-pocket cost to the Public Parties (provided, however, that the Public Parties shall pay their own legal fees, if any), in filing and recording the documents necessary to effectuate any such relocation of

the boundary lines between a Phase 1A Lot and the adjacent Phase 1B Lot. From and after any relocation of the boundary lines between a Phase 1A Lot and the adjacent Phase 1B Lot, all references herein to such Phase 1A Lot or Phase 1B Lot shall be deemed to be references to such Phase 1A Lot or Phase 1B Lot as revised by the relocated boundary lines.

2.5.1 Banks Design Guidelines. The design guidelines for the Banks Improvements (the "Banks Design Guidelines") shall be as follows:

(a) The Parking Facility will have been designed on the basis of the Structural Load Information. Therefore, neither Developer's Banks Improvements shall be designed inconsistently with the Parking Facility Design Documents approved by such Developer unless (i) such Developer reimburses the County for the incremental costs of (x) redesigning the Parking Facility, and (y) in the event the applicable portion of the Parking Facility has been or is being constructed, altering the Parking Facility (including premium costs for change orders) to support and otherwise accommodate such Developer's Banks Improvements in a manner satisfactory to the Public Parties in their sole discretion, and (ii) the resulting redesign of the Parking Facility would not reduce the number of parking spaces in the Parking Facility by more than the Permitted Number (as defined in the immediately following sentence). As used herein, "Permitted Number" means the sum of (x) ten plus (y) if the number of Dedicated Parking Spaces is less than 300, the number by which 300 exceeds the number of Dedicated Parking Spaces; provided that the Permitted Number shall not be greater than 25 (25 being the cap set for any such reduction in the entire Banks Parking Facilities).

(b) The Phase 1A Improvements shall consist of not less than the Minimum Phase 1A Improvements, and the Phase 1B Improvements shall consist of not less than the Minimum Phase 1B Improvements.

(c) The street level of the Banks Improvements fronting on Freedom Way shall be consistent with a predominantly retail corridor.

(d) All Banks Improvements shall be designed to a standard substantially comparable in quality to other "first class" or "class A" buildings in the downtown Cincinnati, Ohio submarket.

(e) All Banks Improvements shall be designed and constructed with consideration given to implementation of green/sustainable design elements, which may include concepts set forth in LEED Green Building Rating System For Core & Shell Development, Version 2.0 (July 2006), LEED Green Building Rating System for New Construction & Major Renovations, Version 2.2, (October 2005), and LEED-ND Application Guide for Multiple Buildings and On-Campus Building Projects, Versions 2.1 and 2.2, (October 2005), as published by the U.S. Green Building Council (collectively, the "LEED Guidelines"). In addition, each Developer shall coordinate with the Metropolitan Sewer District of Greater Cincinnati regarding

storm water management requirements and, where feasible, attempt to utilize "green infrastructure" elements and best management practices. At such time during the design of its Banks Improvements as a Developer deems appropriate, such Developer shall report to the Public Parties its consideration of such green/sustainable design elements through the submission of a report which shall identify the elements of the LEED Guidance or other green/sustainable design elements that have been considered or incorporated into such Banks Improvements. For avoidance of doubt, each Developer is not required to incorporate the LEED Guidance or other green/sustainable design elements in its Banks Improvements or to seek or obtain any green/sustainable design certification for its Banks Improvements, but only to report consideration thereof, as appropriate.

(f) Banks Improvements may not exceed 20 (twenty) levels of parking above the Podium level, such that no Banks Improvements will exceed 24 stories above the Podium level. This height limitation may not be increased without legislative approval by each of the Public Parties.

2.5.2 Design Responsibility Scope of Review. Each Developer, subject to the review and comment of the Public Parties as provided in Section 2.5.3, shall cause Banks Plans for its Banks Improvements to be prepared, consistent with the Banks Design Guidelines. In the process of developing its Banks Plans, each Developer may cease to be prepared and may submit to the Public Parties for review and comment, as provided in Section 2.5.3, schematic design documents, design development documents and other design documents for its Banks Improvements preliminary to its Banks Plans. The County's scope of review in considering any Banks Design Documents shall be limited to reviewing and commenting on the following aspects of such Banks Design Documents: (i) the consistency of such Banks Design Documents with the Banks Design Guidelines; (ii) the consistency of such Banks Design Documents with the Master Development Plan; and (iii) the interfaces of the proposed Banks Improvements with the existing street grid, the Street Grid Improvements, the Utilities, the City Excessions, the Central Riverfront Park and the Transit Center. However, notwithstanding such limitation on the County's scope of review in considering any Banks Design Documents, the design of the Banks Improvements shall be subject to the City's urban design review process and permitting process, and such limitation shall not apply to the City's urban design review process or permitting process. Review of Banks Design Documents by the Public Parties pursuant to this Declaration shall not relieve each Developer from responsibility for designing its Banks Improvements in compliance with Legal Requirements and as required by this Declaration, and the

Public Parties shall not have any liability for any Banks Plans which are inconsistent with Legal Requirements or otherwise defective.

2.5.3 Review and Comment on Banks Design Documents. In reviewing and commenting on Banks Design Documents, each Public Party shall be limited to its scope of review as provided in Section 2.5.2 and shall consider its prior approvals of Banks Design Documents. Within ten business days after a Developer submits to the Public Parties any proposed Banks Design Documents, together with a written notice in the form attached hereto as Exhibit Q-4 stating that such Banks Design Documents are being submitted for comment, the Public Parties shall, by a single written notice to the applicable Developer, either (a) submit to such Developer the Public Parties' combined comments on such Banks Design Documents or (b) advise such Developer that the Public Parties have no comments on such Banks Design Documents. Any comments by the Public Parties on Banks Design Documents shall be reasonable and in reasonable detail and shall specify any aspects within their respective scopes of review in which either Public Party believes that such Banks Design Documents are deficient. The applicable Developer shall review any such comments, may engage in discussions with the Public Parties concerning such comments, and may resubmit revised Banks Design Documents to the Public Parties for review and comment. However, provided that (i) those elements of any Banks Design Documents within either Public Party's scope of review as provided in Section 2.5.2 are in compliance with Legal Requirements, (ii) the Parking Facility and the applicable Podium, as constructed in accordance with the Parking Facility Plans and the Podium Plans, respectively, will provide adequate structural support for the subject Banks Improvements, as constructed in accordance with such Banks Design Documents, (iii) the subject Banks Improvements, if constructed in accordance with such Banks Design Documents, will accommodate the practical use and enjoyment of the County Elements and the City Elements and will not have a material adverse impact on the applicable Waterproofing System, (iv) such Banks Design Documents are not inconsistent with the Banks Design Guidelines, and (v) such Banks Design Documents are not inconsistent with the Master Development Plan in any material respect, a Developer shall not be obligated to revise such Banks Design Documents in response to any comments of the Public Parties, provided that the Banks Design Documents shall be subject to the City's urban design review process and permitting process. Notwithstanding any of the above provisions of this Section 2.5.3 or any other provisions of this Declaration to the contrary, in no event shall any Banks Plans provide for structural loads greater than or inconsistent with the Structural Load Information.

2.5.4 Timing. Each Developer may design its Banks Improvements from time to time as such Developer prepares to commence construction, and may design certain of its Banks Improvements in a design process separate from the design process for other Banks Improvements, all in accordance with this Section 2.5.

2.5.5 Collateral Assignment of Design Documents. At the request of the Public Parties, and in order to facilitate the enforcement by the Public Parties of various remedies available to them under Sections 2.9.5(d) or 2.9.6(f), each Developer shall collaterally assign to the Public Parties all of such Developer's Banks Design Documents and shall cause such Developer's

architects, engineers and other design professionals to acknowledge and consent in writing to such collateral assignment. Such collateral assignment, acknowledgment and consent shall be in commercially reasonable form to be agreed upon by the Parties, but shall be subordinate to any collateral assignment of the same documents made by such Developer to any Mortgagee.

2.6 Construction of Parking Facility.

2.6.1 General. The County shall cause the Parking Facility to be constructed in a good and workmanlike manner, in compliance with all Legal Requirements, and, as to those elements within each Developer's scope of review of the Parking Facility Plans pursuant to Section 2.2.3, without material deviation from the Parking Facility Plans. The County shall cause construction of the Parking Facility to commence with reasonable promptness after completion of design pursuant to Section 2.2, and to be pursued diligently and continuously to Completion, in order that construction of the Phase 1A Improvements can Commence and be pursued without unreasonable delay and be Completed by the Phase 1A Completion Deadline.

2.6.2 Parking Facility Design Changes. After approval of the Parking Facility Plans by Developers and the City pursuant to Section 2.2.4, the County may cause Parking Facility Design Changes to be made from time to time in accordance with this Section 2.6.2. The County may, without notice to or approval by Developers or the City, make Parking Facility Design Changes which do not materially affect any aspect of the Parking Facility Plans within a Developer's or the City's scope of review as provided in Section 2.2.3. If the County desires to make a Parking Facility Design Change which materially affects any aspect of the Parking Facility Plans within a Developer's or the City's scope of review as provided in Section 2.2.3, the County shall first submit such Parking Facility Design Change to such Developer and/or the City, as applicable, for review and approval. Within ten business days after receipt of a proposed Parking Facility Design Change, each Developer and/or the City, as applicable, shall, by written notice to the County, approve or disapprove the same. Note of Developers or the City will unreasonably withhold, condition or delay approval of proposed Parking Facility Design Changes, and in any disapproval each Developer or the City, as applicable, shall specify in reasonable detail the respects (consistent with the disapproving Party's scope of review as provided in Section 2.2.3) in which the proposed Parking Facility Design Change is not satisfactory and the changes necessary for the Parking Facility Design Change to be satisfactory. After receiving any reasonable notice of disapproval from a Developer or the City of a proposed Parking Facility Design Change (consistent with the disapproving Party's scope of review as provided in Section 2.2.3), the County may cause the Parking Facility Design Change to be revised to address the disapproving Party's objections, and may resubmit a revised Parking Facility Design Change to Developers and the City for review and approval to accordance with the procedures set forth above. If the Parties cannot agree to a Parking Facility Design Change, any Party may submit the Parking Facility Design Change at issue for resolution pursuant to the Construction Dispute Resolution Procedures.

installment thereof, shall be allocated 50% to Phase 1A Developer and 50% to Phase 1B Developer, such that Phase 1A Developer shall be responsible for \$300,000 of each of the first and second installments of Developers' Public Parking Contribution and, if applicable, \$1,000,000 of the final installment of Developers' Public Parking Contribution, and Phase 1B Developer shall be responsible for \$300,000 of each of the first and second installments of Developers' Public Parking Contribution and, if applicable, \$1,000,000 of the final installment of Developers' Public Parking Contribution.

2.7 Construction of Podium

2.7.1 General. Although each Podium will be within an Air Lot and will be part of the Banks Property, Developers and the County desire to achieve efficiency by having the Parking Facility and the Podiums constructed as a single integrated project. Therefore, the County shall, subject to reimbursement by Developers as provided in Section 2.7.5, cause the Podiums to be constructed as an integrated project with the Parking Facility. Construction of the Podiums shall be performed in a good and workmanlike manner, in compliance with all Legal Requirements, and without material deviation from the Podium Plans. Subject to approval of the Podium Plans as contemplated by Section 2.3.5, the County shall cause construction of each Podium to Commence at such stage of the construction of the applicable portion of the Parking Facility that construction of such Podium would logically proceed if the Parking Facility and such Podium were being constructed as an integrated whole. The County shall cause construction of the Podiums to Commence with reasonable promptness after completion of design pursuant to Section 2.3 (subject to the immediately preceding sentence) and to be pursued diligently and continuously to Completion, in order that construction of the Phase 1A improvements can Commence and be pursued without unreasonable delay, and be Completed by the Phase 1A Completion Deadline.

2.7.2 Podium Design Changes. After approval of the Podium Plans by Developers and the City pursuant to Section 2.3.5, the County may cause Podium Design Changes to be made from time to time in accordance with this Section 2.7.2. The County may, without notice to or approval by Developers or the City, make Podium Design Changes which do not materially affect any aspect of the Podium Plans within Developers' or the City's scope of review as provided in Section 2.3.1. If the County desires to make a Podium Design Change which materially affects any aspect of the Podium Plans within Developers' or the City's scope of review as provided in Section 2.3.1, the County shall first submit such Podium Design Change to Developers and/or the City, as applicable, for review and approval. Within ten business days after receipt of a proposed Podium Design Change, each Developer and/or the City, as applicable, shall, by written notice to the County, approve or disapprove the same. None of Developers or the City will unreasonably withhold, condition or delay approval of proposed Podium Design Changes, and in any disapproval each Developer or the City, as applicable, shall specify in reasonable detail the respects (consistent with the disapproving Party's scope of review as provided in Section 2.3.1) in which the proposed Podium Design Change is not satisfactory and the changes necessary for the Podium Design Change to be satisfactory. After receiving any reasonable

36

2.6.3 Parking Facility Construction Defects. Within one year after the County gives Developers written notice that Completion of the Parking Facility has been achieved, and at any time prior to Completion of the Parking Facility that a Developer, in its good faith judgment, reasonably believes a Parking Facility Construction Defect to exist, a Developer may give the County written notice of any Parking Facility Construction Defect which such Developer believes to exist. A Developer may not object to, or have any right against the County with respect to, any Parking Facility Construction Defect of which such Developer has not notified the County in accordance with the above provisions of this Section 2.6.3, and such Developer shall be deemed to have waived any such Parking Facility Construction Defect, provided that such Developer shall retain, and shall not be considered to have waived, any rights with respect to a Parking Facility Construction Defect (i) in the structural load bearing capacity of the Parking Facility, or (ii) that materially and adversely affects the use and operation of such Developer's Banks Improvements or the use and enjoyment of any of the Developer Exemptions for the benefit of such Developer or the rights and easements of such Developer under the Parking Agreement. With reasonable promptness after receipt of a permitted notice of any Parking Facility Construction Defect, the County shall, with respect to each such Parking Facility Construction Defect, either (a) cause the Parking Facility Construction Defect to be remedied, or (b) if the County disagrees with a Developer's assertion that such a Parking Facility Construction Defect exists, give such Developer written notice of objection to such assertion. If the County objects to any assertion by a Developer that a Parking Facility Construction Defect exists, either the County or such Developer may submit their disagreement for resolution pursuant to the Construction Dispute Resolution Procedures. With reasonable promptness after any determination that a Parking Facility Construction Defect exists, whether by agreement of the County and a Developer or through the Construction Dispute Resolution Procedures, the County shall cause the Parking Facility Construction Defect to be remedied.

2.6.4 Developers' Public Parking Contribution. In addition to Developers' obligations under Section 7.2, Developers collectively shall contribute \$4,000,000 to the Parking Facility Costs ("Developers' Public Parking Contribution"), which shall be due in installments as provided herein. The first installment of Developers' Public Parking Contribution, in the aggregate amount of \$1,000,000, shall be due when construction of the Parking Facility is 50% Complete. The second installment of Developers' Public Parking Contribution, in the aggregate amount of \$1,000,000, shall be due when construction of the Parking Facility is Complete. The final installment of Developers' Public Parking Contribution, in the amount of \$2,000,000, together with interest thereon at a per annum rate equal to the lesser of 6% or the Prime Rate, computed from the Completion of the Parking Facility until paid, shall be due upon the earlier of (i) Commencement of construction of the Phase 1B Improvements or (ii) the Phase 1B Commencement Deadline; provided that, unless the Phase 1B Contingencies have been satisfied or deemed waived pursuant to Section 2.9.5(b), Developers shall not be required to pay the final installment of Developers' Public Parking Contribution, but such final installment may be paid (x) at Developers' election, to avoid termination of Phase 1B Developer's right to develop the Phase 1B Improvements as provided in Section 2.9.7(a), or (y) by set off as provided in Section 2.9.7(c)(ii). The obligations of Developers for Developers' Public Parking Contribution and each

35

notice of disapproval from a Developer or the City of a proposed Podium Design Change (consistent with the disapproving Party's scope of review as provided in Section 2.3.3), the County may cause the Podium Design Change to be revised to address the disapproving Party's objections, and may resubmit a revised Podium Design Change to Developers and the City for review and approval in accordance with the procedures set forth above. If the Parties cannot agree to a Podium Design Change, any Party may submit the Podium Design Change at issue for resolution pursuant to the Construction Dispute Resolution Procedures.

2.7.3 Waterproofing System. The materials and workmanship with respect to each Waterproofing System shall be covered by a warranty in form reasonably approved by the County and Developers in writing, and such warranty shall run to the benefit of, and be enforceable by, the County and Developers. All contractors and subcontractors for the construction and installation of each Waterproofing System must be approved and/or certified by the manufacturer of such Waterproofing System to the extent required for the effectiveness of the warranty with respect to such Waterproofing System. The County shall provide Developers with reasonable opportunity to review and monitor the design, construction and installation of each Waterproofing System and to inspect each Waterproofing System before it is covered. The design, construction and installation of each Waterproofing System shall be supervised by an independent testing agency experienced in waterproofing membrane systems to verify compliance with the manufacturer's recommendations and the approved plans and specifications. The County shall use commercially reasonable efforts to cause the construction and installation of each Waterproofing System to be coordinated with the construction and installation of the waterproofing systems in the rights-of-way adjacent to the Banks Property. If the County elects not to include a Waterproofing System within any portions of the Access Drives and Ramps, such election shall be at the County's sole risk, and Developers shall not be responsible to the County for any damage, maintenance or repair to the Parking Facility resulting from the absence of a Waterproofing System within such portions of the Access Drives and Ramps.

2.7.4 Podium Construction Defects

(a) Prior to Acceptance. Upon final completion of each Podium, including all punchlist items, the County shall deliver such Podium to Developers and to the City and each Developer and the City shall inspect such Podium for acceptance. The City's rights with respect to each Podium under this Section 2.7.4(a) shall be limited to the City-Maintained Portion of such Podium. If a Developer or the City identifies in writing to the County any Podium Construction Defect with respect to such Podium upon or prior to such inspection, the County shall, with respect to each such Podium Construction Defect, either (i) cause the Podium Construction Defect to be remedied, or (ii) if the County disagrees with such Developer's or the City's assertion that such a Podium Construction Defect exists, give such Developer or the City, as applicable, written notice of objection to such assertion. Consistent with Section 2.9.4(a), any damage to a Podium caused by construction activities with respect to a Developer's Banks Improvements shall not be considered a Podium Construction Defect, and shall be the responsibility of such Developer pursuant to Section 2.9.4(a). If the County objects to any

assertion by a Developer or the City that a Podium Construction Defect exists, the County, such Developer or the City may submit their disagreement for resolution pursuant to the Construction Dispute Resolution Procedures. With reasonable promptness after any determination that a Podium Construction Defect asserted pursuant to this Section 2.7.4(a) exists, whether by agreement of the County and a Developer or the City or through the Construction Dispute Resolution Procedures, the County shall cause the Podium Construction Defect to be remedied. Upon resolution of any Podium Construction Defect identified by a Developer or the City, such Developer or the City, as applicable, shall accept the applicable Podium in writing, whereupon except as otherwise expressly provided in Section 2.7.4(b) or Section 2.7.6, the County shall have no further liabilities or obligations to such Developer or the City with respect to the construction of such Podium. Delivery and acceptance of a Podium pursuant to this Section 2.7.4(a), which are to occur after completion of such Podium, are different concepts than the delivery and acceptance of such Podium, or a designated portion thereof, that are contemplated to occur on the applicable Podium Turnover Date; therefore, delivery and acceptance of a Podium pursuant to this Section 2.7.4(a) shall be determined without reference to the applicable Podium Turnover Date.

(b) After Acceptance. No Party shall have any obligation to another with respect to any Podium Construction Defect which first appears after a Developer's acceptance of the applicable Podium pursuant to Section 2.7.4(a), provided that: (i) this Section 2.7.4(b) shall not affect the County's obligations under Section 2.7.6 in connection with such Podium Construction Contract; and (ii) this Section 2.7.4(b) shall not affect Developer's maintenance and repair obligations with respect to the applicable Podium as provided in Section 3.5.2 or the City's maintenance and repair obligations with respect to the City-Maintained Portion of the applicable Podium as provided in Section 3.5.3.

2.7.5 Podium Costs

(a) Determination of Public Parties' Incremental Share. Prior to commencement of construction of each Podium, Developers shall submit to the Public Parties a proposal as to the applicable Public Parties' Incremental Share, together with reasonably detailed backup documentation supporting the proposal. The Public Parties' Incremental Share proposed by Developers with respect to each Podium shall be determined by Developers in good faith based on the area of the Non-Allocated Portion of such Podium, the reasonably estimated Podium Costs for such Podium, and the reasonably estimated portion of such Podium Costs attributable to the City's requirement that the Non-Allocated Portion of such Podium be built to bear loads in excess of standard pedestrian sidewalk loads, including, without limitation, loads to accommodate emergency vehicles. If the Public Parties accept the Public Parties' Incremental Share proposed by Developers, then the Public Parties' Incremental Share shall be as so proposed. If the Public Parties do not accept the Public Parties' Incremental Share proposed by Developers, then the Public Parties shall negotiate in good faith to agree to the Public Parties' Incremental Share, and, if necessary, shall attempt to resolve any disagreement as to the Public Parties' Incremental Share pursuant to the Construction Dispute Resolution Procedures.

Grid/Utility Plans. The Public Parties shall cause construction of the Street Grid Improvements and the Utilities to Commence with reasonable promptness after completion of design pursuant to Section 2.4, and to be pursued diligently and continuously to Completion.

2.8.2 Street Grid/Utility Design Changes. After approval of the Street Grid/Utility Plans by Developers and the County pursuant to Section 2.4.4, the City may cause Street Grid/Utility Design Changes to be made from time to time in accordance with this Section 2.8.2. The City may, without notice to or approval by Developers or the County, make Street Grid/Utility Design Changes which do not materially affect any aspect of the Street Grid/Utility Plans within Developers' or the County's scope of review as provided in Section 2.4.3. If the City desires to make a Street Grid/Utility Design Change which materially affects any aspect of the Street Grid/Utility Plans within Developers' or the County's scope of review as provided in Section 2.4.3, the City shall first submit such Street Grid/Utility Design Change to such Developer and/or the County, as applicable, for review and approval. Within ten business days after receipt of a proposed Street Grid/Utility Design Change, Developers and/or the County, as applicable, shall, by written notice to the City, approve or disapprove the same. None of Developers or the County will unreasonably withhold, condition or delay approval of proposed Street Grid/Utility Design Changes, and in any disapproval such Developer or the County, as applicable, shall specify in reasonable detail the respects (consistent with the disapproving Party's scope of review as provided in Section 2.4.3) in which the proposed Street Grid/Utility Design Change is not satisfactory and the changes necessary for the Street Grid/Utility Design Change to be satisfactory. After receiving any reasonable notice of disapproval from a Developer or the County of a proposed Street Grid/Utility Design Change (consistent with the disapproving Party's scope of review as provided in Section 2.4.3), the City may cause the Street Grid/Utility Design Change to be revised to address the disapproving Party's objections, and may resubmit a revised Street Grid/Utility Design Change to Developers and the County for review and approval in accordance with the procedures set forth above. If the Parties cannot agree to a Street Grid/Utility Design Change, any Party may submit the Street Grid/Utility Design Change at issue for resolution pursuant to the Construction Dispute Resolution Procedures.

2.8.3 Street Grid/Utility Construction Defects. Within one year after the City gives Developers written notice that Completion of the Street Grid Improvements and the Utilities has been achieved, and at any time prior to Completion of the Street Grid Improvements and the Utilities that a Developer, in its good faith judgment, reasonably believes a Street Grid/Utility Construction Defect to exist, a Developer may give the City written notice of any Street Grid/Utility Construction Defect which such Developer believes to exist. A Developer may not object to, or have any rights against the City with respect to, any Street Grid/Utility Construction Defect of which such Developer has not notified the City in accordance with the above provisions of this Section 2.8.3, and such Developer shall be deemed to have waived any such Street Grid/Utility Construction Defect; provided that such Developer shall retain, and shall not be considered to have waived, any rights with respect to a Street Grid/Utility Construction Defect that materially interferes with the use and enjoyment of the Banks Property. With reasonable promptness after receipt of a permitted notice of any Street Grid/Utility Construction

(b) **Invoice Payment.** The Public Parties shall be responsible for the Public Parties' Incremental Share of Podium Costs, and Developers shall be responsible for all other Podium Costs. As the Public Parties are invoiced for costs that include Podium Costs, the Public Parties shall invoice Phase IA Developer for 50% of such Podium Costs in excess of the Public Parties' Incremental Share, and shall invoice Phase IB Developer for 50% of such Podium Costs in excess of the Public Parties' Incremental Share. The Public Parties shall furnish to each Developer, with each invoice for Podium Costs, reasonably detailed backup documentation supporting the invoiced amount of Podium Costs. Each Developer shall pay invoices directed to it for Podium Costs within 60 days after receipt.

2.7.6 Construction Contracts. Each Podium Construction Contract shall be subject to the approval of Developers, which approval shall not be unreasonably withheld. The County shall cause each Podium Construction Contract (a) to provide that each Developer is an intended third party beneficiary thereunder and, as such, (i) shall be entitled to rely upon and directly enforce the duties, obligations, liabilities and responsibilities of the contractor thereunder, (ii) shall be entitled to all legal and equitable remedies against the contractor as if it were the other contracting party thereunder, (iii) shall have a right to rely on all representations and warranties of the contractor thereunder, and (iv) shall have the benefit of all warranties and guarantees of the contractor thereunder; and (b) to require that all insurances (other than worker's compensation insurances) maintained by the contractor pursuant thereto shall name each Developer as an additional insured and that all waivers of subrogation by the contractor and its insurers thereunder shall be for the benefit of Developers. At the request of a Developer or the County, the County and Developers shall cooperate with each other in enforcing each contractor's obligations with respect to the Podium under each Podium Construction Contract. The County agrees, for the benefit of Developers: (1) to fully and completely perform and satisfy the County's duties, obligations, liabilities and responsibilities under each Podium Construction Contract, including, without limitation, those relating to the payment of all fees, costs, other compensation and other amounts payable to the contractor thereunder; (2) not to take any action, and not to omit to take any action, that causes the contractor's duties, obligations, liabilities or responsibilities under each Podium Construction Contract, or the legal and equitable remedies against the contractor thereunder, to be diminished, affected, impaired or waived in any manner whatsoever; and (3) to be liable and responsible to each Developer for any loss, cost or damage suffered, incurred or sustained by such Developer to the extent arising out of or by reason of the County's breach of the foregoing clause (1) or (2).

2.8 Construction of Street Grid Improvements and Utilities.

2.8.1 General. The Public Parties shall cause the Street Grid Improvements and the Utilities to be constructed and installed in a good and workmanlike manner, in compliance with all Legal Requirements, and, as to those elements within Developers' scope of review of the Street Grid/Utility Plans pursuant to Section 2.4.3, without material deviation from the Street

Defect, the City shall, with respect to each such Street Grid/Utility Construction Defect, either (a) cause the Street Grid/Utility Construction Defect to be remedied, or (b) if the City disagrees with a Developer's assertion that such a Street Grid/Utility Construction Defect exists, give such a Developer written notice of objection to such assertion. If the City objects to any assertion by a Developer that a Street Grid/Utility Construction Defect exists, either the City or such Developer may submit their disagreement for resolution pursuant to the Construction Dispute Resolution Procedures. With reasonable promptness after any determination that a Street Grid/Utility Construction Defect exists, whether by agreement of the City and a Developer or through the Construction Dispute Resolution Procedures, the City shall cause the Street Grid/Utility Construction Defect to be remedied.

2.9 Construction of Banks Improvements

2.9.1 General. Each Developer shall cause its Banks Improvements to be constructed in a good and workmanlike manner, in compliance with all Legal Requirements, and, as to those elements within the Public Parties' scope of review of the applicable Banks Plans pursuant to Section 2.5.2, without material deviation from such Banks Plans. However, the Public Parties shall not have the right under this Declaration to object to any elements of the construction of a Developer's Banks Improvements other than Banks Construction Defects as provided in Section 2.9.3. Each Developer may Commence construction of its Banks Improvements at such time that construction of the Parking Facility and the applicable Podium has progressed to the point that construction of such Banks Improvements can reasonably Commence consistent with good construction practices. Phase 1A Developer shall Commence construction of the Phase 1A Improvements by the Phase 1A Commencement Deadline, subject to extension for Excusable Delay. Phase 1B Developer shall Commence construction of the Phase 1B Improvements by the Phase 1B Commencement Deadline, subject to extension for Excusable Delay and subject to extension by Phase 1B Developer as provided in Section 2.9.5(c). After Commencement of construction of any Banks Improvements, the applicable Developer shall diligently and continuously pursue construction of such Banks Improvements to Completion. Phase 1A Developer shall Complete construction of the Phase 1A Improvements, consisting of not less than Minimum Phase 1A Improvements by the Phase 1A Completion Deadline, subject to extension for Excusable Delay. Phase 1B Developer shall Complete construction of the Phase 1B Improvements, consisting of not less than the Minimum Phase 1B Improvements, by the Phase 1B Completion Deadline, subject to extension for Excusable Delay. Notwithstanding anything to the contrary set forth in this Declaration, the obligation of each Developer for the Commencement, prosecution and Completion of its Banks Improvements shall be absolutely conditioned and contingent upon the Commencement, prosecution and Completion by the Public Parties of the Parking Facility, the Podiums, the Street Grid Improvements and the Utilities, including but not limited to the structural support intended to be provided by the Parking Facility and the Podiums for such Banks Improvements, to the extent necessary for the Commencement, prosecution and Completion of such Banks Improvements at each stage of the development and construction thereof and, upon Completion, for the use of such Banks Improvements. For avoidance of doubt, any delay in the satisfaction of the foregoing condition

and contingency in any respect, including, without limitation, (a) the failure of the Public Parties to meet the target dates of (i) December 31, 2009 for the Podium Turnover Date with respect to the Lot 16 Podium and (ii) October 23, 2009 for the Podium Turnover Date with respect to the Lot 26 Podium, (b) any material interruption of the ongoing construction of a Podium after the applicable Podium Turnover Date, and (c) any material interruption of construction of Banks Improvements on a Podium by the ongoing construction of a Podium after the applicable Podium Turnover Date, shall constitute an event within the meaning of clauses (j) and (k) of the definition of Force Majeure Event.

2.9.2 Banks Design Changes. Each Developer may make Banks Design Changes from time to time after such Developer submits its Banks Plans to the Public Parties, in accordance with this Section 2.9.2. A Developer may, without notice to or approval by the Public Parties, make Banks Design Changes which do not materially affect any aspect of such Developer's Banks Plans within a Public Party's scope of review as provided in Section 2.5.2. If a Developer desires to make a Banks Design Change which materially affects any aspect of such Developer's Banks Plans within a Public Party's scope of review as provided in Section 2.5.2, such Developer shall first submit such Banks Design Change to such Public Party for review and approval. Within ten business days after receipt of a proposed Banks Design Change by a Public Party, such Public Party shall, by written notice to the applicable Developer, approve or disapprove the same. The Public Parties will not unreasonably withhold, condition or delay approval of proposed Banks Design Changes, and in any disapproval the disapproving Public Party shall specify in reasonable detail the respects (consistent with the disapproving Public Party's scope of review as provided in Section 2.5.2) in which the proposed Banks Design Change is not satisfactory and the changes necessary for the Banks Design Change to be satisfactory. After receiving any reasonable notice of disapproval of a proposed Banks Design Change (consistent with the disapproving Public Party's scope of review as provided in Section 2.5.2), the applicable Developer may cause the Banks Design Change to be revised to address the Public Party's objections, and may resubmit a revised Banks Design Change to the Public Parties for review and approval in accordance with the procedures set forth above. Notwithstanding the limitation on the City's scope of review in considering Banks Design Changes, Banks Design Changes shall be subject to the City's urban design review process and permitting process, and such limitation shall not apply to the City's urban design review process or permitting process.

2.9.3 Banks Construction Defect. Within one year after a Developer gives the Public Parties written notice that Completion of its Banks Improvements has been achieved, and at any time prior to Completion of such Banks Improvements that a Public Party, in its good faith judgment, reasonably believes a Banks Construction Defect to exist, a Public Party may give the applicable Developer written notice of any Banks Construction Defect which such Public Party believes to exist. A Public Party may not object to, or have any rights with respect to, any Banks Construction Defect of which one of the Public Parties has not notified the applicable Developer in accordance with the above provisions of this Section 2.9.3, and the Public Parties shall be deemed to have waived any such Banks Construction Defect, provided that the County (and the City, as applicable) shall retain, and shall not be considered to have

of such drains; and (iv) shall repair any damage to a Waterproofing System caused by construction activities with respect to such Developer's Banks Improvements.

(b) Developers understand that the County may open the Parking Facility for business to the public while construction of the Banks Improvements is ongoing. In order to meet its obligations under Section 2.9.4(b) and to adequately protect the public during construction, as part of the construction easement granted under Section 6.1.1, each Developer shall have the right to restrict access to portions of the Parking Facility from time to time as reasonably necessary or appropriate consistent with good construction practices, provided that each Developer shall use commercially reasonable efforts to minimize interference with the County's use of the Parking Facility. In addition, temporary construction facilities, such as shoring mechanisms to protect the Parking Facility from damage by loads imposed temporarily during construction activities, shall be permitted within the Parking Facility for such reasonable periods of time as are necessary to protect the public and the Parking Facility from injury and damage. Subject to the foregoing, at all times that portions of the Parking Facility are open for business to the public while construction of any Banks Improvements is ongoing: (i) the applicable Developer shall take all reasonable measures consistent with good construction practices to control the effects of the construction of its Banks Improvements on the use and enjoyment of such portions of the Parking Facility by Parking Property Permittees; and (ii) the applicable Developer shall keep such portions of the Parking Facility, including but not limited to all public entrances to and driveways of the Parking Facility, unobstructed and reasonably free of mud and construction materials and debris caused by construction activities with respect to its Banks Improvements. In no event shall the applicable Developer be responsible to the County for forgone parking revenues related to portions of the Parking Facility closed to the public during construction of the Banks Improvements.

2.9.5 Commencement Deadlines.

(a) Extension for Excusable Delay. The Phase IA Commencement Deadline and the Phase IB Commencement Deadline shall be subject to extension for Excusable Delay. Each Developer shall give the Public Parties written notice of the Force Majeure Event which is the basis of an Excusable Delay applicable to such Developer with reasonable promptness after such Developer becomes aware that the Force Majeure Event has occurred and will cause an Excusable Delay.

(b) Phase IB Contingencies. The obligation of Phase IB Developer to Commence construction of the Phase IB Improvements is contingent on Phase IB Developer having satisfied (i) any pre-leasing requirements of its lender or equity partner for any office portion of the Phase IB Improvements, and (ii) any pre-sale requirements of its lender or equity partner for any residential condominium portion of the Phase IB Improvements (the "Phase IB Contingencies"); provided that the Phase IB Contingencies shall be deemed waived if, prior to the satisfaction thereof, Master Developer gives a Full Air Lot Trigger Notice (as defined in the Master Development Agreement) which is not withdrawn and is no longer subject to withdrawal

waived, any rights against a Developer with respect to a Banks Construction Defect (i) in the structural head of such Developer's Banks Improvements on a Podium and/or the Parking Facility, (ii) which impairs a Waterproofing System, or (iii) that materially interferes with the use and enjoyment of any of the County Elements or the City Elements. With reasonable promptness after receipt of a permitted notice of any Banks Construction Defect, the applicable Developer shall, with respect to such Banks Construction Defect, either (a) cause the Banks Construction Defect to be remedied, or (b) if such Developer disagrees with a Public Party's assertion that such a Banks Construction Defect exists, give the Public Parties written notice of objection to such assertion. If a Developer objects to any assertion by a Public Party that a Banks Construction Defect exists, either such Developer or such Public Party may submit their disagreement for resolution pursuant to the Construction Dispute Resolution Procedures (in which both Public Parties shall participate). With reasonable promptness after any determination that a Banks Construction Defect exists, whether by agreement or through the Construction Dispute Resolution Procedures, the applicable Developer shall cause the Banks Construction Defect to be remedied. The County shall receive, to the extent possible, the benefit of any and all warranties from contractors, subcontractors, material suppliers, equipment suppliers, architects, engineers or others in connection with the Parking-Related Elements of the Banks Property.

2.9.4 Construction Process.

(a) Each Developer shall use commercially reasonable efforts to cause the construction of its Banks Improvements to be performed in such a manner as not to damage the Parking Facility, the Podiums, the existing street grid not intended to be removed, the Street Grid Improvements, the Transit Center or the Central Riverfront Park, and, during the construction of its Banks Improvements, shall provide appropriate protection for the Parking Facility, the Podiums, the existing street grid not intended to be removed, the Street Grid Improvements, the Transit Center and the Central Riverfront Park. Each Developer shall repair any damage to the Parking Facility, the Podiums, the existing street grid not intended to be removed, the Street Grid Improvements, the Transit Center or the Central Riverfront Park, in each instance to the extent not related to a defect in the design or construction thereof, caused by construction activities with respect to such Developer's Banks Improvements, and shall repair with reasonable promptness any material cracks in the Podiums and any damage to the drains in the Podiums which develop during the course of such Developer's construction activities. Each Developer shall be responsible for any and all claims by or to third parties for bodily injury, death or property damage arising from or related to construction activities with respect to such Developer's Banks Improvements, except to the extent caused by the negligence or willful misconduct of the Public Parties. Without limiting the generality of the above provisions of this clause (a), a Developer: (i) shall not, and shall not permit or suffer any of its contractors, subcontractors or material suppliers to, penetrate a Waterproofing System, (ii) shall not, and shall not permit or suffer any of its contractors, subcontractors or material suppliers to, penetrate a Waterproofing System other than in a manner contemplated by the specifications for such Waterproofing System and coordinated with the County; (iii) shall keep the drains in its portions of the Podiums free of construction debris and other debris so as to allow the proper functioning

pursuant to the Master Development Agreement. Phase 1B Developer will proceed diligently and in good faith to attempt to satisfy the Phase 1B Contingencies, and, at the request of a Public Party from time to time, will confirm in writing the status of the Phase 1B Contingencies. At such time, if any, that the Phase 1B Contingencies have been satisfied or waived, Phase 1B Developer will, at the request of a Public Party, confirm the same in writing.

(c) Optional Extensions of Phase 1B Commencement Deadline. Unless the Phase 1B Contingencies have been satisfied or deemed waived pursuant to Section 2.9.5(b), Phase 1B Developer shall have two options to extend the Phase 1B Commencement Deadline by one year. Each such option shall be exercised, if at all, by written notice given to the Public Parties not later than the Phase 1B Commencement Deadline (as the same may previously have been extended), accompanied by an extension fee in the amount of \$250,000 for the first one-year extension and an extension fee in the amount of \$500,000 for the second one-year extension. If Phase 1B Developer pays any extension fee to the Public Parties pursuant to this Section 2.9.5(c) and subsequently Commences the Phase 1B Improvements by the extended Phase 1B Commencement Deadline, such extension fee shall be credited against amounts owing by Phase 1B Developer to the Public Parties under this Declaration; otherwise, such extension fee shall be non-refundable and forfeit to the Public Parties (but subject to the rights of Master Developer to use unused portions of any extension fee under the Master Development Agreement).

(d) Phase 1A Commencement Default; Remedies. If Phase 1A Developer fails to Commence construction of the Phase 1A Improvements by the Phase 1A Commencement Deadline, the Public Parties may, at their option exercisable prior to Commencement of such construction, give the Phase 1A Developer written notice of the Public Parties' intention to exercise remedies with respect to such failure to Commence construction (a "Phase 1A Commencement Delay Notice"). Any Phase 1A Commencement Delay Notice, in order to be effective, must be given or joined in by both Public Parties and one Public Party acting alone will not have the power to give an effective Phase 1A Commencement Delay Notice. If the Public Parties give Phase 1A Developer a Phase 1A Commencement Delay Notice, and Phase 1A Developer does not, within 30 days after the date of the Phase 1A Commencement Delay Notice, Commence construction of the Phase 1A Improvements, a "Phase 1A Commencement Default" shall exist. The Public Parties may exercise any one or more of the following remedies for a Phase 1A Commencement Default, which shall be the sole and exclusive remedies of the Public Parties as against Phase 1A Developer under this Declaration for a Phase 1A Commencement Default and shall be exercisable in combinations only as hereinafter set forth:

(i) Specific Performance. The Public Parties may specifically enforce Phase 1A Developer's obligation to Commence and Complete construction of the Phase 1A Improvements, and, in such event, Phase 1A Developer waives the defense that the Public Parties have an adequate remedy at law in as to allow such equitable relief.

(ii) Right of Re-Entry. The City may exercise the right of re-entry under the Development Deed with respect to the Phase 1A Lots.

(iii) Construction of Phase 1A Improvements. The Public Parties may take over construction of the Phase 1A Improvements, as follows:

(A) If the Public Parties take over construction of the Phase 1A Improvements, the Public Parties may require Phase 1A Developer to pay to the Public Parties an amount equal to the sum of the estimated costs to construct the Phase 1A Improvements (including but not limited to all design and construction costs), in which event Phase 1A Developer shall pay such amount to the Public Parties within ten days after written demand. The estimated costs to construct the Phase 1A Improvements shall be estimated by the Public Parties in a commercially reasonable manner. The Public Parties may from time to time re-estimate the costs to construct the Phase 1A Improvements, and if such re-estimated costs exceed the previous estimate, Phase 1A Developer shall pay the amount of such excess to the Public Parties within ten days after written demand. Any amounts paid by Phase 1A Developer to the Public Parties pursuant to this Section 2.9.5(d)(iii)(A) shall be deposited by the Public Parties in an interest-bearing account (the "Phase 1A Construction Account"), with interest earned to be retained in and become a part of the Phase 1A Construction Account, and applied in accordance with the following provisions of this Section 2.9.5(d)(iii)(A). The Public Parties may cause the Phase 1A Improvements to be constructed, and may pay the costs of constructing the Phase 1A Improvements from the funds in the Phase 1A Construction Account; and, if the actual costs of constructing the Phase 1A Improvements exceed the funds available in the Phase 1A Construction Account, Phase 1A Developer shall pay to the Public Parties the amount of such excess within ten days after written demand. Any funds remaining in the Phase 1A Construction Account after completion of the Phase 1A Improvements and payment of all costs thereof shall be returned by the Public Parties to Phase 1A Developer.

(B) If the Public Parties construct any Phase 1A Improvements as provided in Section 2.9.5(d)(iii)(A), the Public Parties shall, upon completion of such Phase 1A Improvements, market the subject Development Lot(s) for any condominium units within such Development Lot(s) for sale in a commercially reasonable manner. The net proceeds, after reasonable and customary closing costs and adjustments, of the sale of the subject Development Lot(s) for the condominium units within such Development Lot(s) shall be applied, first, to reimburse the Public Parties for the actual costs of constructing the subject Phase 1A Improvements, except to the extent paid from the Phase 1A Construction Account, until all such costs are reimbursed in full, and second, to reimburse Phase 1A Developer for amounts paid by Phase 1A Developer to the Public Parties pursuant to Section 2.9.5(d)(iii)(A).

(iv) Recovery of Parking Facility Costs. The Public Parties may recover from Phase 1A Developer the amount by which (i) the Parking Facility Costs exceed (ii) the amount that the Parking Facility Costs would reasonably have been if the Parking Facility had not been designed to support the Phase 1A Improvements. However, if the Public Parties take over construction of the Phase 1A Improvements pursuant to Section 2.9.5(d)(iii), Phase 1A Developer shall be relieved from its obligation for excess Parking Facility Costs under the immediately preceding sentence to the extent that the excess Parking Facility Costs were necessary to support the Phase 1A Improvements as constructed by the Public Parties. If, within five years after Phase 1A Developer pays the excess Parking Facility Costs to the Public Parties pursuant to the first sentence of this Section 2.9.5(d)(iv), improvements to the subject Development Lot(s) are constructed such that the Public Parties and/or the developer of such improvements realize benefit from the excess Parking Facility Costs (after taking into account any costs of retrofitting the Parking Facility), the Public Parties shall repay to Phase 1A Developer the excess Parking Facility Costs previously paid by Phase 1A Developer to the Public Parties, to the extent of such benefit.

(v) Recovery of Dedicated Parking Upgrade Costs. If, at Phase 1A Developer's request, upgrades are made to the Dedicated Parking Spaces or to portions of the Parking Facility serving the Dedicated Parking Spaces, but such upgrades were not made generally to the Parking Facility, then the Public Parties may recover from Phase 1A Developer the Dedicated Parking Upgrade Costs. If, within five years after Phase 1A Developer pays Dedicated Parking Upgrade Costs pursuant to the immediately preceding sentence, improvements to the Phase 1A Lots (or any Development Lot created by a subdivision of a Phase 1A Lot) are constructed such that the Public Parties and/or the developer of such improvements realize benefit from the upgrades to the Dedicated Parking Spaces, the Public Parties shall repay to Phase 1A Developer the Dedicated Parking Upgrade Costs previously paid by Phase 1A Developer to the Public Parties, to the extent of such benefit.

(vi) Limitation of Remedies. The foregoing remedies may be exercised only individually or in the following combinations:

(A) The remedies provided for in Sections 2.9.5(d)(i) and 2.9.5(d)(ii) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.5(d)(iii), 2.9.5(d)(iv) or 2.9.5(d)(v).

(B) The remedies provided for in Sections 2.9.5(d)(i), 2.9.5(d)(iv) or 2.9.5(d)(v) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.5(d)(iii) and 2.9.5(d)(iii).

(C) The occurrence of a Phase 1A Commencement Default shall preclude the occurrence of a Phase 1A Completion Default, and in no event shall the Public Parties have any remedies for a Phase 1A Completion Default under Section 2.9.6(b).

if a Phase 1A Commencement Default has occurred, unless such Phase 1A Commencement Default has been cured and a Phase 1A Completion Default thereafter occurs.

(c) Phase 1B Commencement Default Remedies. If the Phase 1B Contingencies are satisfied or deemed waived pursuant to Section 2.9.5(b) and Phase 1B Developer fails to commence construction of the Phase 1B Improvements by the Phase 1B Commencement Deadline, the Public Parties may, at their option exercisable prior to commencement of such construction, give Phase 1B Developer written notice of the Public Parties' intention to exercise remedies with respect to such failure to commence construction (a "Phase 1B Commencement Delay Notice"). Any Phase 1B Commencement Delay Notice, in order to be effective, must be given or joined in by both Public Parties, and one Public Party acting alone will not have the power to give an effective Phase 1B Commencement Delay Notice. If the Public Parties give Phase 1B Developer a Phase 1B Commencement Delay Notice, and Phase 1B Developer does not, within 30 days after the date of the Phase 1B Commencement Delay Notice, commence construction of the Phase 1B Improvements or extend the Phase 1B Commencement Deadline in accordance with Section 2.9.5(c), a "Phase 1B Commencement Default" shall exist. The Public Parties may exercise any one or more of the following remedies for a Phase 1B Commencement Default, which shall be the sole and exclusive remedies of the Public Parties as against Phase 1B Developer under this Declaration for a Phase 1B Commencement Default and shall be exercisable in combinations only as hereinafter set forth:

(i) Specific Performance. The Public Parties may specifically enforce Phase 1B Developer's obligation to commence and complete construction of the Phase 1B Improvements, and in such event, Phase 1B Developer waives the defense that the Public Parties have an adequate remedy at law so as to allow such equitable relief.

(ii) Right of Re-Entry. The City may exercise the right of re-entry under the Development Deed with respect to the Phase 1B Lots.

(iii) Construction of Phase 1B Improvements. The Public Parties may take over construction of the Phase 1B Improvements, as follows:

(A) If the Public Parties take over construction of the Phase 1B Improvements, the Public Parties may require Phase 1B Developer to pay to the Public Parties an amount equal to the sum of the estimated costs to construct such the Phase 1B Improvements (including but not limited to all design and construction costs), in which event Phase 1B Developer shall pay such amount to the Public Parties within ten days after written demand. The estimated costs to construct the Phase 1B Improvements shall be estimated by the Public Parties in a commercially reasonable manner. The Public Parties may from time to time re-estimate the costs to construct the Phase 1B Improvements, and if such re-estimated costs exceed the previous estimate, Phase 1B Developer shall pay the amount of such excess to the Public Parties within ten days after written demand. Any amounts paid by Phase 1B Developer to the Public Parties pursuant

to this Section 2.9.5(e)(iii)(A) shall be deposited by the Public Parties in an interest-bearing account (the "Phase 1B Construction Account"), with interest earned to be retained in and become a part of the Phase 1B Construction Account, and applied in accordance with the following provisions of this Section 2.9.5(e)(iii)(A). The Public Parties may cause the Phase 1B Improvements to be constructed, and may pay the costs of constructing the Phase 1B Improvements from the funds in the Phase 1B Construction Account; and, if the actual costs of constructing the Phase 1B Improvements exceed the funds available in the Phase 1B Construction Account, Phase 1B Developer shall pay to the Public Parties the amount of such excess within ten days after written demand. Any funds remaining in the Phase 1B Construction Account after completion of the Phase 1B Improvements and payment of all costs thereof shall be returned by the Public Parties to Phase 1B Developer.

(B) If the Public Parties construct any Phase 1B Improvements as provided in Section 2.9.5(e)(iii)(A), the Public Parties shall, upon completion of such Phase 1B Improvements, market the subject Development Lot(s) for any condominium units within such Development Lot(s) for sale in a commercially reasonable manner. The net proceeds, after reasonable and customary closing costs and adjustments, of the sale of the subject Development Lot(s) for the condominium units within such Development Lot(s) shall be applied, first, to reimburse the Public Parties for the actual costs of constructing the subject Phase 1B Improvements, except to the extent paid from the Phase 1B Construction Account, until all such costs are reimbursed in full, and second, to reimburse Phase 1B Developer for amounts paid by Phase 1B Developer to the Public Parties pursuant to Section 2.9.5(e)(iii)(A).

(iv) Recovery of Parking Facility Costs. The Public Parties may recover from Phase 1B Developer the amount by which (i) the Parking Facility Costs exceed (ii) the amount that the Parking Facility Costs would reasonably have been if the Parking Facility had not been designed to support the Phase 1B Improvements. However, if the Public Parties take over construction of the Phase 1B Improvements pursuant to Section 2.9.5(e)(iii), Phase 1B Developer shall be relieved from its obligation for excess Parking Facility Costs under the immediately preceding sentence to the extent that the excess Parking Facility Costs were necessary to support the Phase 1B Improvements as constructed by the Public Parties. If, within five years after Phase 1B Developer pays the excess Parking Facility Costs to the Public Parties pursuant to the first sentence of this Section 2.9.5(e)(iv), improvements to the subject Development Lot(s) are constructed such that the Public Parties and/or the developer of such improvements realize benefit from the excess Parking Facility Costs (after taking into account any costs of retrofitting the Parking Facility), the Public Parties shall repay to Phase 1B Developer the excess Parking Facility Costs previously paid by Phase 1B Developer to the Public Parties, to the extent of such benefit.

(v) Limitation of Remedies. The foregoing remedies may be exercised only individually or in the following combinations:

(A) The remedies provided for in Sections 2.9.5(e)(i) and 2.9.5(e)(iii) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.5(e)(ii) or 2.9.5(e)(iv).

(B) The remedies provided for in Sections 2.9.5(e)(ii) or 2.9.5(e)(iv) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.5(e)(i) and 2.9.5(e)(iii).

(C) The occurrence of a Phase 1B Commencement Default shall preclude the occurrence of a Phase 1B Completion Default, and in no event shall the Public Parties have any remedies for a Phase 1B Completion Default under Section 2.9.6(c) if a Phase 1B Commencement Default has occurred, unless such Phase 1B Commencement Default has been cured and a Phase 1B Completion Default thereafter occurs.

2.9.6 Completion Deadlines.

(a) Extension for Excusable Delay. The Phase 1A Completion Deadline and the Phase 1B Completion Deadline shall be subject to extension for Excusable Delay. The applicable Developer shall give the Public Parties written notice of the Force Majeure Event which is the basis for the Excusable Delay with reasonable promptness after such Developer becomes aware that the Force Majeure Event has occurred and will cause an Excusable Delay. Each Developer shall use commercially reasonable efforts to minimize the effect of any Excusable Delay.

(b) Phase 1A Completion Default; Remedies. If Phase 1A Developer fails to complete construction of the Phase 1A Improvements by the Phase 1A Completion Deadline, the Public Parties may, at their option exercisable prior to completion of the Phase 1A Improvements, give Phase 1A Developer written notice of the Public Parties' intention to exercise remedies with respect to such failure to complete (a "Phase 1A Completion Delay Notice"). Any Phase 1A Completion Delay Notice, in order to be effective, must be given or joined in by both Public Parties, and one Public Party acting alone will not have the power to give an effective Phase 1A Completion Delay Notice. If the Public Parties give Phase 1A Developer a Phase 1A Completion Delay Notice and Phase 1A Developer does not, within 30 days after the date of the Phase 1A Completion Delay Notice, either (x) complete construction of the Phase 1A Improvements or (y) make such arrangements for completion of the Phase 1A Improvements, and provide such assurances to the Public Parties regarding completion of the Phase 1A Improvements, as are satisfactory to the Public Parties in their sole discretion, a "Phase 1A Completion Default" shall exist. The Public Parties may exercise any one or more of the following remedies for a Phase 1A Completion Default, which shall be the sole and exclusive remedies of the Public Parties against Phase 1A Developer under this Declaration for a Phase 1A Completion Default and shall be exercisable in combinations only as hereinafter set forth:

(ii) Specific Performance. The Public Parties may specifically enforce Phase 1A Developer's obligation to complete construction of the Phase 1A Improvements, and in such event, Phase 1A Developer waives the defense that the Public Parties have an adequate remedy at law so as to allow such equitable relief.

(iii) Completion of Phase 1A Improvements. The Public Parties may take over construction of the Phase 1A Improvements, as follows:

(A) If the Public Parties take over construction of the Phase 1A Improvements, the Public Parties may require Phase 1A Developer to pay to the Public Parties an amount equal to the sum of the estimated costs to complete construction of the Phase 1A Improvements (including but not limited to all design and construction costs), in which event Phase 1A Developer shall pay such amount to the Public Parties within ten days after written demand. The estimated costs to complete construction of the Phase 1A Improvements shall be estimated by the Public Parties in a commercially reasonable manner. The Public Parties may from time to time re-estimate the costs to complete construction of the Phase 1A Improvements, and if such re-estimated costs exceed the previous estimate, Phase 1A Developer shall pay the amount of such excess to the Public Parties within ten days after written demand. Any amounts paid by Phase 1A Developer to the Public Parties pursuant to this Section 2.9.6(b)(ii)(A) shall be deposited by the Public Parties in an interest-bearing account (the "Phase 1A Completion Account"), with interest earned to be retained in and become a part of the Phase 1A Completion Account, and applied in accordance with the following provisions of this Section 2.9.6(b)(ii)(A). The Public Parties may cause the Phase 1A Improvements to be completed, and may pay the costs of completing the Phase 1A Improvements from the funds in the Phase 1A Completion Account; and, if the actual costs of completing the Phase 1A Improvements exceed the funds available in the Phase 1A Completion Account, Phase 1A Developer shall pay to the Public Parties the amount of such excess within ten days after written demand. Any funds remaining in the Phase 1A Completion Account after completion of the Phase 1A Improvements and payment of all costs thereof shall be returned by the Public Parties to Phase 1A Developer.

(B) If (x) the Public Parties take over construction of any Phase 1A Improvements as provided in Section 2.9.6(b)(ii)(A), and (y) the Public Parties are not fully reimbursed by Phase 1A Developer for the actual costs of completing such Phase 1A Improvements, the Public Parties may, upon completion of such Phase 1A Improvements, require Phase 1A Developer to market the subject Development Lot(s) for the condominium units within such Development Lot(s) for sale in a commercially reasonable manner. The net proceeds, after reasonable and customary closing costs and adjustments, of the sale of the subject Development Lot(s) (or the condominium units within such Development Lot(s)) shall be applied, first, to reimburse the Public Parties for the actual costs of completing the subject Phase 1A Improvements, except to the extent paid from the Phase 1A Completion Account, until all such costs are

reimbursed in full, and second, to Phase 1A Developer. If Phase 1A Developer fails or refuses to comply with the Public Parties' requirement to market the subject Development Lot(s) for the condominium units within such Development Lot(s) for sale in a commercially reasonable manner, the Public Parties may cause the Development Lot(s) for the condominium units within such Development Lot(s) to be sold by judicial sale in accordance with Ohio law, in which event the net proceeds of the judicial sale shall be applied, first, to reimburse the Public Parties for all costs incurred by the Public Parties in connection with the judicial sale, second, to reimburse the Public Parties for the actual costs of completing the subject Phase 1A Improvements, except to the extent paid from the Phase 1A Completion Account, until all such costs are reimbursed in full, and third, to Phase 1A Developer.

(iii) Recovery of Parking Facility Costs. The Public Parties may recover from Phase 1A Developer the amount by which (A) the Parking Facility Costs exceed (B) the amount that the Parking Facility Costs would reasonably have been if the Parking Facility had been designed to support such of the Phase 1A Improvements as were built at the time of the Phase 1A Completion Default. However, if the Public Parties take over construction of the Phase 1A Improvements pursuant to Section 2.9.6(b)(ii)(A), Phase 1A Developer shall be relieved from its obligation for excess Parking Facility Costs under the immediately preceding sentence to the extent that the excess Parking Facility Costs were necessary to support the Phase 1A Improvements as completed by the Public Parties. If, within five years after Phase 1A Developer pays the excess Parking Facility Costs to the Public Parties pursuant to the first sentence of this Section 2.9.6(b)(iii), improvements to the subject Development Lot(s) are constructed or completed such that the Public Parties and/or the developer of such improvements realize benefit from the excess Parking Facility Costs (after taking into account any costs of retrofitting the Parking Facility), the Public Parties shall repay to Phase 1A Developer the excess Parking Facility Costs previously paid by Phase 1A Developer to the Public Parties, to the extent of such benefit.

(iv) Recovery of Dedicated Parking Upgrade Costs. If, at Phase 1A Developer's request, upgrades are made to the Dedicated Parking Spaces or to portions of the Parking Facility serving the Dedicated Parking Spaces, but such upgrades were not made generally to the Parking Facility, then the Public Parties may recover from Phase 1A Developer the Dedicated Parking Upgrade Costs. If, within five years after Phase 1A Developer pays the Dedicated Parking Upgrade Costs pursuant to the immediately preceding sentence, improvements to the Phase 1A Lot (or any Development Lot created by a subdivision of a Phase 1A Lot) are constructed or completed such that the Public Parties and/or the developer of such improvements realize benefit from the upgrades to the Dedicated Parking Spaces, the Public Parties shall repay to Phase 1A Developer the Dedicated Parking Upgrade Costs previously paid by Phase 1A Developer to the Public Parties, to the extent of such benefit.

(v) Limitation of Remedies. The foregoing remedies may be exercised only individually or in the following combinations:

the costs to Complete construction of the Phase IB Improvements, and if such re-estimated costs exceed the previous estimate, Phase IB Developer shall pay the amount of such excess to the Public Parties within ten days after written demand. Any amounts paid by Phase IB Developer to the Public Parties pursuant to this Section 2.9.6(b)(iv)(A) shall be deposited by the Public Parties in an interest-bearing account (the "Phase IB Completion Account"), with interest earned to be retained in and become a part of the Phase IB Completion Account, and applied in accordance with the following provisions of this Section 2.9.6(c)(i)(A). The Public Parties may cause the Phase IB Improvements to be Completed, and may pay the costs of Completing the Phase IB Improvements from the funds in the Phase IB Completion Account; and, if the actual costs of Completing the Phase IB Improvements exceed the funds available in the Phase IB Completion Account, Phase IB Developer shall pay to the Public Parties the amount of such excess within ten days after written demand. Any funds remaining in the Phase IB Completion Account after Completion of the Phase IB Improvements and payment of all costs thereof shall be returned by the Public Parties to Phase IB Developer.

(B) If (x) the Public Parties take over construction of the any Phase IB Improvements as provided in Section 2.9.6(e)(ii)(A), and (y) the Public Parties are not fully reimbursed by Phase IB Developer for the actual costs of Completing such Phase IB Improvements, the Public Parties may, upon Completion of such Phase IB Improvements, require Phase IB Developer to market the subject Development Lot(s) (or the condominium units within such Development Lot(s)) for sale in a commercially reasonable manner. The net proceeds, after reasonable and customary closing costs and adjustments, of the sale of the subject Development Lot(s) (or the condominium units within such Development Lot(s)) shall be applied, first, to reimburse the Public Parties for the actual costs of Completing the Phase IB Improvements, except to the extent paid from the Phase IB Completion Account, until all such costs are reimbursed in full, and second, to Phase IB Developer. If Phase IB Developer fails or refuses to comply with the Public Parties' requirement to market the subject Development Lot(s) (or the condominium units within such Development Lot(s)) for sale in a commercially reasonable manner, the Public Parties may cause the Development Lot(s) (or the condominium units within such Development Lot(s)) to be sold by judicial sale in accordance with Ohio law, in which event the net proceeds of the judicial sale shall be applied, first, to reimburse the Public Parties for all costs incurred by the Public Parties in connection with the judicial sale, second, to reimburse the Public Parties for the actual costs of Completing the Phase IB Improvements, except to the extent paid from the Phase IB Completion Account, until all such costs are reimbursed in full, and third, to Phase IB Developer.

(iii) Recovery of Parking Facility Costs. The Public Parties may recover from Phase IB Developer the amount by which (A) the Parking Facility Costs exceed (B) the amount that the Parking Facility Costs would reasonably have been if the Parking Facility had been designed to support such of the Phase IB Improvements as were built at the

(A) The remedies provided for in Sections 2.9.6(b)(i) and 2.9.6(b)(ii) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.6(b)(iii) or 2.9.6(b)(iv).

(B) The remedies provided for in Sections 2.9.6(b)(iii) or 2.9.6(b)(iv) may be exercised in combination with each other, but not in combination with any of the remedies provided for in Sections 2.9.6(b)(i) and 2.9.6(b)(ii).

(c) Phase IB Completion Default Remedies. If Phase IB Developer fails to Complete construction of the Phase IB Improvements by the Phase IB Completion Deadline, the Public Parties may, at their option exercisable prior to Completion of the Phase IB Improvements, give Phase IB Developer written notice of the Public Parties' intention to exercise remedies with respect to such failure to Complete (a "Phase IB Completion Delay Notice"). Any Phase IB Completion Delay Notice, in order to be effective, must be given or joined in by both Public Parties, and one Public Party acting alone will not have the power to give an effective Phase IB Completion Delay Notice. If the Public Parties give Phase IB Developer a Phase IB Completion Delay Notice and Phase IB Developer does not, within 30 days after the date of the Phase IB Completion Delay Notice, either (x) Complete construction of the Phase IB Improvements or (y) make such arrangements for Completion of the Phase IB Improvements, and provide such assurances to the Public Parties in their sole discretion, a "Phase IB Completion Default" shall exist. The Public Parties may exercise any one or more of the following remedies for a Phase IB Completion Default, which shall be the sole and exclusive remedies of the Public Parties against Phase IB Developer under this Declaration for a Phase IB Completion Default and shall be exercisable in combinations only as hereinafter set forth:

(i) Suitcase Performance. The Public Parties may specifically enforce Phase IB Developer's obligation to Complete construction of the Phase IB Improvements, and in such event, Phase IB Developer waives the defense that the Public Parties have an adequate remedy at law so as to allow such equitable relief.

(ii) Completion of Phase IB Improvements. The Public Parties may take over construction of the Phase IB Improvements, as follows:

(A) If the Public Parties take over construction of the Phase IB Improvements, the Public Parties may require Phase IB Developer to pay to the Public Parties an amount equal to the sum of the estimated costs to Complete construction of the Phase IB Improvements (including but not limited to all design and construction costs), in which event Phase IB Developer shall pay such amount to the Public Parties within ten days after written demand. The estimated costs to Complete construction of the Phase IB Improvements shall be estimated by the Public Parties in a commercially reasonable manner. The Public Parties may from time to time re-estimate

Development Agreement. The above provisions of this Section 2.9.7(a) are subject to the provisions of Section 2.9.7(b).

(b) Preservation of Right to Develop Phase 1B Improvements. Notwithstanding anything to the contrary set forth in Section 2.9.7(a), if, prior to termination of Phase 1B Developer's right to develop the Phase 1B Improvements pursuant to Section 2.9.7(e), Developers have paid the final \$2,000,000 installment of Developers' Public Parking Contribution, with interest, as provided in Section 2.6.4, then: (i) the Public Parties may not terminate Phase 1B Developer's right to develop the Phase 1B Improvements pursuant to Section 2.9.7(e); (ii) the Phase 1B Commencement Deadline shall be eliminated; and (iii) upon Commencement of the Phase 1B Improvements, the Phase 1B Completion Deadline shall be adjusted to be the date which is three years after such Commencement.

(c) Effect of Termination of Right to Develop Phase 1B Improvements. Upon termination of Phase 1B Developer's right to develop the Phase 1B Improvements pursuant to Section 2.9.7(a):

(i) Phase 1B Developer shall convey the Phase 1B Lots to or at the direction of the Public Parties by limited warranty deed, free and clear of all liens and encumbrances other than real property taxes, payments in lieu of real property taxes and installments of assessments not due and payable, this Declaration, the applicable Service Agreements, the General Declaration, easements, covenants, conditions and restrictions of record subject to which the Phase 1B Lots were conveyed to Phase 1B Developer, and other easements, covenants, conditions and restrictions of record granted by Phase 1B Developer in good faith.

(ii) Phase 1B Developer may invoice the Public Parties for the actual verified out-of-pocket investment by Phase 1B Developer in the Phase 1B Lots, including without limitation the Podium Costs paid by Phase 1B Developer pursuant to Section 2.7.5 and all development costs reasonably allocable to the Phase 1B Lots, which invoice shall be accompanied by reasonably detailed backup documentation supporting the invoiced amount. Such invoice shall include interest on the invested amounts computed at a per annum rate equal to the lesser of 6% or the Prime Rate from the date of investment to the invoice date. The Public Parties shall pay such invoice within 45 days after receipt, subject to set off for any unpaid portion of the final \$2,000,000 installment of Developers' Public Parking Contribution, with interest. Phase 1B Developer shall keep complete and detailed records with respect to Phase 1B Developer's out-of-pocket investment in the Phase 1B Lots, and the Public Parties shall have the right to audit such books and records to confirm the appropriateness of any invoice submitted by Phase 1B Developer to the Public Parties pursuant to this Section 2.9.7(c)(ii).

2.10 Allocation of Infrastructure Costs. In the event that costs incurred under any Infrastructure Contract relate exclusively to the Parking Facilities, the Street Grid Improvements, the Utilities or a Podium, such costs shall be allocated exclusively to such Infrastructure Improvements as applicable. In the event that costs incurred under any Infrastructure Contract

56

first of the Phase 1B Completion Deadline. However, if the Public Parties take over construction of the Phase 1B Improvements pursuant to Section 2.9.6(c)(iii)(A), Phase 1B Developer shall be relieved from its obligation for excess Parking Facility Costs under the immediately preceding sentence to the extent that the excess Parking Facility Costs were necessary to support the Phase 1B Improvements as Completed by the Public Parties. If, within five years after Phase 1B Developer pays the excess Parking Facility Costs to the Public Parties pursuant to the first sentence of this Section 2.9.6(c)(iii), improvements to the Phase 1B Lots (or any Development Lot created by a subdivision of a Phase 1B Lot) are constructed or completed such that the Public Parties and/or the developer of such improvements realize benefit from the excess Parking Facility Costs (after taking into account any costs of retrofitting the Parking Facility), the Public Parties shall repay to Phase 1B Developer the excess Parking Facility Costs previously paid by Phase 1B Developer to the Public Parties, to the extent of such benefit.

(iv) Limitation of Remedies. The remedies provided for in Sections 2.9.6(c)(i) and 2.9.6(c)(ii) may be exercised in combination with each other, but not in combination with the remedy provided for in Section 2.9.6(c)(iii). Otherwise, the remedies provided for in Section 2.9.6(c) may be exercised only individually.

2.9.7 Failure of Phase 1B Contingencies

(a) Termination of Right to Develop Phase 1B Improvements. If the Phase 1B Contingencies are not satisfied or deemed waived pursuant to Section 2.9.5(c) and Phase 1B Developer fails to Commence construction of the Phase 1B Improvements by the Phase 1B Commencement Deadline (as the same may have been extended pursuant to Section 2.9.5(c)), the Public Parties may, at their option exercisable prior to Commencement of the Phase 1B Improvements, and even though Phase 1B Developer is not then obligated to Commence construction of the Phase 1B Improvements by reason of the status of the Phase 1B Contingencies, give Phase 1B Developer written notice of the Public Parties' intention to terminate Phase 1B Developer's right to develop the Phase 1B Improvements by reason of such failure to Commence construction of the Phase 1B Improvements (a "Phase 1B Delay Notice"). Any Phase 1B Delay Notice, in order to be effective, must be given or joined in by both Public Parties, and one Public Party acting alone will not have the power to give Phase 1B Developer a Phase 1B Delay Notice. If the Public Parties give Phase 1B Developer a Phase 1B Delay Notice, and Phase 1B Developer does not, within 30 days after the date of the Phase 1B Delay Notice, Commence construction of the Phase 1B Improvements, a "Phase 1B Commencement Failure" shall exist. If a Phase 1B Commencement Failure exists, the Public Parties may, by written notice given to Phase 1B Developer prior to Commencement of the Phase 1B Improvements, terminate Phase 1B Developer's right to develop the Phase 1B Improvements. The election to terminate Phase 1B Developer's right to develop the Phase 1B Improvements as provided above shall be the sole available remedy of the Public Parties as against Phase 1B Developer for a Phase 1B Commencement Failure, provided that such limitation shall not affect any remedies that may be available to the Public Parties as against Master Developer under the Master

55

relate to any combination of the Parking Facilities, the Street Grid Improvements, the Utilities and the Podiums, such costs shall be reasonably and accurately allocated among such Infrastructure Improvements, as applicable. Any such allocations shall be made in the first instance by the contractor providing the design or construction services under the applicable Infrastructure Contract, shall be supported by reasonably detailed backup documentation, and shall be subject to the reasonable approval of Developers and the Public Parties. The Parties shall cooperate with each other in obtaining access to the books and records of applicable contractors to confirm the reasonableness and accuracy of the allocations provided for in this Section 2.10.

2.11 General Coordination and Cooperation. The Parties intend that the design and construction of the Parking Facility, the Podiums, the Street Grid Improvements, the Utilities and the Banks Improvements shall occur in a coordinated manner, such that (a) design of the Parking Facility, the Podiums and the Banks Improvements is coordinated to expedite Commencement of construction of the Parking Facility, and (b) construction of the Banks Improvements can Commence at such time that it is reasonable to Commence such construction consistent with good construction practices, but prior to Completion of the Parking Facility, the Podiums, the Street Grid Improvements and the Utilities. The Parties shall mutually cooperate, and cause their employees, agents and contractors to mutually cooperate, to coordinate the design and construction activities for the Parking Facility, the Podiums, the Street Grid Improvements, the Utilities and the Banks Improvements.

2.12 Resolution of Construction Disputes. Any Construction Dispute shall, as a condition precedent to litigation, first be subject to the Construction Dispute Resolution Procedures as set forth below in this Section 2.12.

2.12.1 Negotiated Settlement. The first step in the Construction Dispute Resolution Procedures shall be an attempt to negotiate a settlement of the Construction Dispute, as follows:

(a) A Party or Parties desiring to initiate settlement negotiations (the "Initiating Party," whether one or more than one) may do so by giving written notice to the other Party or Parties (the "Responding Party," whether one or more than one) of the basis for the Construction Dispute, provided that the Initiating Party shall use commercially reasonable efforts to furnish the Responding Party, as expeditiously as possible, with notice of any Construction Dispute once such Construction Dispute is recognized, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such Construction Dispute.

(b) The Initiating Party shall, within 20 business days after giving written notice to the Responding Party of the basis for the Construction Dispute, prepare and provide to the Responding Party a written, detailed summary of the basis for the Construction Dispute, together with all facts, documents, backup data and other information reasonably

available to the Initiating Party that support the Initiating Party's position in the Construction Dispute.

(c) The Initiating Party shall designate and make any of its employees or agents having knowledge of the Construction Dispute available to the Responding Party to respond to questions of the Responding Party.

(d) Within 20 business days after the Initiating Party gives notice of a Construction Dispute and furnishes the materials required by Section 2.12.1(b), (i) the Responding Party shall prepare and provide to the Initiating Party a written, detailed summary, together with all facts, documents, backup data and other information reasonably available to the Responding Party that support the Responding Party's position in the Construction Dispute, and (ii) employees or agents of the Parties who have authority to settle the Construction Dispute, along with other parties having knowledge of or an interest in the Construction Dispute, shall meet at a mutually acceptable time and place in Cincinnati, Ohio, in an effort to compromise and settle the Construction Dispute.

2.12.2 Mediation. Unless delay in initiating or prosecuting a claim in litigation would irrevocably prejudice a Party, any Construction Dispute which is not resolved by direct discussions and negotiations as provided in Section 2.12.1 shall be submitted to mediation under the Commercial Mediation Procedures of the American Arbitration Association or such other rules as the Parties may agree to use. If the Parties cannot agree on the selection of a mediator within ten days of the request for mediation, any Party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location in Cincinnati, Ohio that the mediator may designate. Developers (or the applicable Developer, if only one Developer is party to the Construction Dispute), on the one hand, and the Public Parties, on the other hand, shall each be responsible for 50% of the mediation expenses. The Parties shall conclude mediation proceedings under this Section 2.12.2 within 60 days after the designation of the mediator. In the event that mediation proceedings do not resolve the Construction Dispute within such period, a Party may commence litigation with respect to the Construction Dispute.

2.12.3 No Prejudice. Provided the Initiating Party has complied with the requirements for giving notice of the existence of a Construction Dispute, no delay in resolving of such Construction Dispute while the Parties pursue the Construction Dispute Resolution Procedures shall prejudice the rights of any Party. At the request of the Initiating Party or the Responding Party, the Parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of a Construction Dispute while the Parties pursue the Construction Dispute Resolution Procedures.

2.13 Certificate of Completion. At the request of a Party at any time after Completion of the Parking Facility, a Podium or the Banks Improvements to any Development Lot, the applicable Parties shall execute a Certificate of Completion in the form of Exhibit K-1.

Exhibit K-2, Exhibit K-3 or Exhibit K-4 hereto, as applicable, confirming such Completion, for recording in the Hamilton County, Ohio Recorder's Office.

ARTICLE 2.3 USE AND OPERATING RESTRICTIONS AND COVENANTS

3.1 Nuisances. The County will not commit or permit any nuisance or illegal activity in, on or about the Parking Property. A Developer will not commit or permit any nuisance or illegal activity in, on or about its Banks Property.

3.2 Compliance With Legal Requirements. The County shall comply with all Legal Requirements applicable to the use and operation of the Parking Property and the County Easements; provided that no Developer (or any Banks Property Permittee through a Developer) shall have any rights or claims against the County under this Declaration by reason of the County's non-compliance with such Legal Requirements, except to the extent that non-compliance has a material adverse effect on the use and operation of such Developer's Banks Improvements or the use and enjoyment of any of the Developer Easements for the benefit of such Developer or the rights and easements of such Developer under the Parking Agreement. Each Developer shall comply with all Legal Requirements applicable to the use and operation of its Banks Property and the Developer Easements for the benefit of such Developer; provided that no Party or any Parking Property Permittee shall have any rights or claims against a Developer under this Declaration by reason of such Developer's non-compliance with such Legal Requirements, except to the extent that non-compliance has a material adverse effect on the use and enjoyment of the Parking Property or any of the County Easements or the City Easements.

3.3 Real Estate Taxes. The County and Developers shall cause the Lot 16 Parking Property, the Lot 26 Parking Property, each Phase 1A Banks Property and each Phase 1B Banks Property to be taxed as separate real estate tax parcels. Phase 1A Developer shall be responsible for the payment of any real estate taxes and assessments with respect to each Phase 1A Banks Property. Phase 1B Developer shall be responsible for the payment of any real estate taxes and assessments with respect to each Phase 1B Banks Property, and the County shall be responsible for the payment of any real estate taxes and assessments with respect to the Lot 16 Parking Property and the Lot 26 Parking Property. The County and Developers intend that improvements value (for property tax purposes) applicable to the Lot 16 Parking Property, the Lot 26 Parking Property, each Phase 1A Banks Property and each Phase 1B Banks Property shall be appropriately allocated based on the improvements that are contained within, respectively, Lot 16A, Lot 26A, each Phase 1A Lot and each Phase 1B Lot. The County and Developers intend that land value (for property tax purposes) applicable to each Ground Lot and the Air Lot immediately above such Ground Lot in the aggregate shall be appropriately allocated among the Ground Lot, the Phase 1A Lot and the Phase 1B Lot, and agree that it would be reasonable to allocate such aggregate land value (for property tax purposes) among such Ground Lot, the applicable Phase 1A Lot and the applicable Phase 1B Lot on the basis of the relative improvements values (for property tax purposes, whether or not tax-exempt) for the

improvements thereto. The County and Developers shall cooperate in communicating with, and providing information to, the Hamilton County Auditor consistent with the above intentions. However, none of the County or Developers shall have liability to the others should the property values determined by the Hamilton County Auditor be inconsistent with this Declaration. The County and Developers do not waive any right of appeal of property tax valuation, but agree not to seek any valuation inconsistent with this Section 3.3.

3.4 Utilities. The Parking Property, each Phase 1A Banks Property and each Phase 1B Banks Property shall be separately metered for utility services. Each Developer shall be responsible for the payment of all charges for utility services furnished to such Developer's Banks Property. The County shall be responsible for the payment of all charges for utility services furnished to the Parking Property.

3.5 Maintenance and Repair.

3.5.1 County Obligations. The County shall maintain and keep in good condition and repair, subject to Article 5: (a) the Parking Facility, other than those Banks-Related Elements of the Parking Property used exclusively or primarily by Banks Property Permittees; (b) those Banks-Related Elements of the Banks Property used exclusively or primarily by Parking Property Permittees; (c) the support columns and other elements of the Parking Facility supporting the Banks Improvements; (d) the County's equipment within the Ventilation Shafts; and (e) the Headhouses. In performing such maintenance and repair obligations, whether ordinary maintenance and repair or pursuant to Article 5, the County shall: (i) take reasonable steps to minimize interference with the use and operation of the Banks Improvements or the use and enjoyment of any of the Developer Easements or the rights and easements of a Developer under the Parking Agreement; (ii) take reasonable steps not to damage the Banks Improvements; and (iii) be responsible to each Developer for any damage to such Developer's Banks Improvements, and for any claims by third parties for bodily injury, death or property damage, and related costs and expenses, arising from or related to any such maintenance and repair activities.

3.5.2 Developer Obligations. Each Developer shall maintain and keep in good condition and repair, subject to Article 5: (a) its Banks Improvements, other than those Parking-Related Elements of its Banks Property used exclusively or primarily by Parking Property Permittees; (b) those Banks-Related Elements of the Parking Property used exclusively or primarily by its Banks Property Permittees; (c) the sanitary sewer laterals installed below grade within the Ground Lots and the vertical risers feeding those laterals; and (d) from and after acceptance of the applicable Podium pursuant to Section 2.7.4(a), (i) that portion of such Podium, other than the City-Maintained Portion of such Podium, within its Banks Property, (ii) the Private Expansion Joists within its Banks Property, (iii) the Waterproofing System on and within that portion of the City-Maintained Portion of such Podium within its Banks Property, and (iv) any Ventilation Shafts extending through the portion of such Podium within its Banks Property, other than the County's equipment within such Ventilation Shafts. In performing such

maintenance and repair obligations, whether ordinary maintenance and repair or pursuant to Article 3, each Developer shall: (i) take reasonable steps to minimize interference with the County Easements and the operation of the Parking Facility; (ii) take reasonable steps not to damage the Parking Facility; (iii) be responsible to the County for any damage to the Parking Facility arising from or related to any such maintenance and repair activities; (iv) as between such Developer and the Public Parties, be responsible for any and all claims by third parties for bodily injury, death or property damage arising from or related to any such maintenance and repair activities; and (v) be responsible to the County for any lost parking revenues due to any parking spaces not being usable as a result of such maintenance and repair.

3.5.3 City Obligations. The City shall maintain and keep in good condition and repair, subject to Article 3, the City-Maintained Portion of each Podium (other than the Waterproofing System on and within the City-Maintained Portion of each Podium) and the Street Grid Expansion Joints. In maintaining and repairing the City-Maintained Portion of such Podium and the Street Grid Expansion Joints, the City shall: (i) take reasonable steps to minimize interference with the use and operation of the Parking Facility and the Banks Improvements or the use and enjoyment of any of the Developer Easements or the County Easements; (ii) take reasonable steps not to damage the Parking Facility or the Banks Improvements; (iii) be responsible to the County for any damage to the Parking Facility, and for any claims by third parties for bodily injury, death or property damage, and related costs and expenses, arising from or related to any such maintenance and repair activities; and (iv) be responsible to each Developer for any damage to such Developer's Banks Improvements, and for any claims by third parties for bodily injury, death or property damage, and related costs and expenses, arising from or related to any such maintenance and repair activities.

3.6 Flooding. Developers and the County acknowledge that the Ground Lots and the Air Lots are in an area subject to flood hazard by the Ohio River. None of Developers or the County shall have any responsibility to another for any damage to the Parking Property or the Banks Property caused by flooding of the Ohio River, provided that, in response to any such flooding, the County shall be responsible for all necessary debris removal from, and clean-up of, the Parking Facility as part of its maintenance and repair obligations pursuant to Section 3.5.

3.7 Security. The County may provide for such security services and systems as the County desires in the Parking Property, including but not limited to those portions of the Parking Property subject to the Developer Easements, and shall not have any obligation to Developers to provide any such security services or systems. Each Developer may provide for such security services and systems as its desires in its Banks Property, including but not limited to those portions of its Banks Property subject to the County Easements, and shall not have any obligation to the County to provide any security services or systems.

3.8 Restriction on Use of Developer Parking Spaces. Other than with the prior written approval of the Public Parties, a Developer shall not use or permit the use of its Developer Parking Spaces for public parking purposes (it being understood that use for dedicated

residential parking, hotel guest parking, handicapped parking or up to 110 parking spaces for dedicated office parking shall not be considered public parking purposes), unless such Developer accounts to and pays over to the County the revenues generated by the public use of such Developer Parking Spaces.

3.9 Restriction on Use of Portion of Lot 26B-1A. Pursuant to Section 6.3.1, Phase 1A Developer is granting to the City, for the benefit of the public, an easement for the clear and unobstructed use of the sidewalks within the portion of Lot 26B-1A depicted as "Sidewalk Easement Area" in Exhibit J, hereto. Consistent with such easement, Phase 1A Developer shall not construct or permit the construction of improvements on, or place or permit the placement of any property on, such Sidewalk Easement Area. In addition, Phase 1A Developer shall not construct or permit the construction of improvements on, or place or permit the placement of any property on, the portion of Lot 26B-1A depicted as "Use Restriction Area" in Exhibit J, hereto, being an 18 inch wide strip situated immediately northerly of, and extending along the length of, the Sidewalk Easement Area, other than tables, chairs, hostess stations, waitress stations, awnings or canopies, heating implements and other items customarily used in connection with outdoor eating, and/or drinking areas and any fixed rail or fencing required by Legal Requirements applicable to outdoor eating and/or drinking areas.

ARTICLE 4 INSURANCE

4.1 The County's Insurance. The County shall maintain, or cause to be maintained, the insurance coverages provided for below in this Section 4.1:

4.1.1 General Liability. The County shall maintain, or cause to be maintained, commercial general liability insurance with respect to the Parking Facility operations, including insurance for claims arising from contractual liability, with annual limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, subject to adjustment as provided in Section 4.3. The County's obligations with respect to commercial general liability insurance may be satisfied by the inclusion of the Parking Property within the coverage of a "blanket" policy of insurance provided that the limit of liability shall apply on a "per location" basis to the Parking Property and shall not be defeated by losses paid for any other location covered under the policy. The County may, at the County's option, self-insure the risks that would be covered by such a general liability insurance policy under a commercially reasonable program of self-insurance.

4.1.2 Builder's Risk. At all times during the construction of the Parking Facility or a Podium, the County shall maintain, or cause to be maintained, all risk builder's risk insurance, with earthquake coverage, for the full replacement value thereof (subject to a commercially reasonable sublimit for earthquake coverage).

4.1.3 Property. At all times after Completion of construction of the Parking Facility, the County shall maintain, or cause to be maintained, insurance coverage at least as broad as ISO Special Form Coverage insuring against risks of direct physical loss or damage (commonly known as "all risk"), written at full replacement cost value, with agreed value endorsement, for the Parking Property. The County's obligations with respect to property insurance may be satisfied by the inclusion of the Parking Property within the coverage of a "blanket" policy of insurance provided that the policy specify the Parking Property. The County shall be permitted to insure under policies that include commercially reasonable self-insured retention or deductibles.

4.1.4 Contractor's Liability. At all times during the construction of the Parking Facility or a Podium, the County shall maintain, or cause each contractor performing work thereon, to maintain, (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (b) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (c) worker's compensation insurance in the statutory amount, and (d) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on diseases (all such minimum limits being subject to adjustments as provided in Section 4.3).

4.1.5 Umbrella/Access Liability. At all times during the construction of the Parking Facility or a Podium, the County shall maintain, or cause each contractor performing work thereon to maintain, umbrella and excess liability insurance with a minimum limit of \$5,000,000 for all insurance specified in Sections 4.1.4, except worker's compensation insurance.

4.1.6 Professional Liability. At all times during the design and construction of the Parking Facility or a Podium, the County shall maintain, or cause its design architects and engineers performing the design work for the Parking Facility and such Podium to maintain, architects' and engineers' professional liability insurance, on a claims-made basis, with a minimum limit of \$2,000,000 per claim and in the aggregate, subject to adjustment as provided in Section 4.3.

4.1.7 General Requirements. All insurance policies required to be maintained pursuant to the above provisions of this Section 4.1 shall be issued by insurance companies rated A VII or better by the current Best's Key Rating Guide or the equivalent in subsequent editions and authorized to do business in the State of Ohio, or otherwise reasonably acceptable to Developers. All such insurance policies shall: (a) where appropriate, name each Developer and its employees and agents, and, at the request of a Developer, its Mortgagees as additional insureds; (b) stipulate where appropriate that such insurance is primary and is not additional to any insurance carried by a Developer; (c) if appropriate, contain a waiver of subrogation provision as contemplated by Section 4.4; (d) contain within the policy or by endorsement a cross liability or severability of interest clause; and (e) provide that the insurance may not be canceled without at least 30 days prior notice to Developers. At the request of a Developer from time to time, the County will furnish to such Developer certificates of insurance evidencing the required insurance coverages. Any claims-made

policy will include a tail of at least two years or evidence that the coverage remains in effect at least two years after completion of the matter which is the subject of the policy.

4.2 Developers' Insurance. Each Developer shall maintain, or cause to be maintained, the insurance coverages provided for below in this Section 4.2:

4.2.1 General Liability. Each Developer shall maintain, or cause to be maintained, commercial general liability insurance with respect to its Banks Property operations, including insurance for claims arising from contractual liability, with annual limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, subject to adjustment as provided in Section 4.3. Each Developer's obligations with respect to commercial general liability insurance may be satisfied by the inclusion of its Banks Property within the coverage of a "blanket" policy of insurance provided that the limit of its Banks shall apply on a "per location" basis to its Banks Property and shall not be defeated by losses paid for any other location covered under the policy.

4.2.2 Builder's Risk. At all times during the construction of its Banks Improvements, a Developer shall maintain, or cause to be maintained, all risk builder's risk insurance, with earthquake coverage, for the full replacement value thereof (subject to a commercially reasonable sublimit for earthquake coverage).

4.2.3 Property. At all times after Completion of construction of its portion of a Podium or any of its Banks Improvements, a Developer shall maintain, or cause to be maintained, insurance coverage at least as broad as ISO Special Form Coverage insuring against risks of direct physical loss or damage (commonly known as "all risk"), written at full replacement cost value, with agreed value endorsement, for such portion of a Podium and such Banks Improvements. A Developer's obligations with respect to property insurance may be satisfied by the inclusion of its Banks Property within the coverage of a "blanket" policy of insurance provided that the policy specify such Banks Property. A Developer shall be permitted to insure under policies that include deductibles to a limit not exceeding \$50,000.

4.2.4 Contractor's Liability. At all times during the construction of any of its Banks Improvements, a Developer shall maintain, or cause each contractor performing work thereon to maintain, (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, (b) automobile liability insurance, including owned, non-owned, leased and hired motor vehicle insurance coverage, with a minimum limit of \$1,000,000 combined single limit, (c) worker's compensation insurance in the statutory amount, and (d) employer's liability (Ohio stop gap) insurance in an amount not less than \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on diseases (all such minimum limits being subject to adjustment as provided in Section 4.3).

4.2.5 Umbrella/Access Liability. At all times during the construction of or any of its Banks Improvements, a Developer shall maintain, or cause each contractor performing work

ARTICLE 3
CASUALTY/VOLUNTARY DEMOLITION

5.1 Casualty

5.1.1 Total Loss to Parking Facility Segment and Banks Improvements. If a Casualty causes a Total Loss to a Parking Facility Segment and the Banks Improvements above such Parking Facility Segment, then the following provisions of this Section 5.1.1 shall apply:

(a) The County and Developers shall jointly hire a demolition contractor, in accordance with Legal Requirements, to demolish the remaining portions of the Parking Facility Segment and Banks Improvements, including the return of the applicable Ground Lot and Air Lot to a safe and sanitary condition. The cost of demolition of the Parking Facility Segment and Banks Improvements shall be allocated as among such Parking Facility Segment and Banks Improvements by the demolition contractor on an equitable basis, and the County shall be responsible for the demolition cost allocated to such Parking Facility Segment (subject to payment or reimbursement with insurance proceeds), and each Developer shall be responsible for the demolition cost allocated to its Bank's Improvements (subject to payment or reimbursement with insurance proceeds).

(b) The County and Developers shall confer as appropriate and, within one year after completion of the demolition work, each shall elect, by written notice to the others, whether it intends to rebuild the Parking Facility Segment or its Banks Improvements, as applicable. If the County elects to rebuild the Parking Facility Segment, and a Developer elects to rebuild its Banks Improvements, then the County and such Developer shall proceed with the design and construction of the Parking Facility Segment and such Banks Improvements in a coordinated manner as contemplated by Article 2. If the County elects not to rebuild the Parking Facility Segment and each Developer elects not to rebuild its Banks Improvements, then, at the option of the County or a Developer exercisable by written notice given to the others within ten years after completion of the demolition work, this Declaration shall terminate as to the applicable Ground Lot and Air Lot. If the County elects to rebuild the Parking Facility Segment and each Developer elects not to rebuild its Banks Improvements, then, at the option of the County exercisable by written notice given to Developers within ten years after completion of the demolition work, this Declaration shall terminate as to the applicable Ground Lot and Air Lot. If the County elects not to rebuild the Parking Facility Segment and a Developer elects to rebuild its Banks Improvements, then, notwithstanding the County's election, the County and such Developer shall proceed with the design and construction of the Parking Facility Segment and such Banks Improvements in a coordinated manner as contemplated by Article 2; provided that the County shall be obligated to such Developer to rebuild only such elements of the Parking Facility Segment as are necessary to support such Developer's Banks Improvements as designed in accordance with this Declaration.

66

thereon to maintain, umbrellas and excess liability insurance with a minimum limit of \$5,000,000 for all insurance specified in Section 4.2.4, except worker's compensation insurance.

4.2.6 Professional Liability. At all times during the design and construction of any of its Bank's Improvements, a Developer shall maintain, at cause its outside architects and engineers performing the design work for such Banks Improvements to maintain, architects' and engineers' professional liability insurance, on a claims-made basis, with a minimum limit of \$5,000,000 per claim and in the aggregate, subject to adjustment as provided in Section 4.3.

4.2.7 General Requirements. All insurance policies required to be maintained pursuant to the above provisions of this Section 4.2 shall be issued by insurance companies rated A VII or better by the current Best's Key Rating Guide or the equivalent in subsequent editions and authorized to do business in the State of Ohio, or otherwise reasonably acceptable to the County. All such insurance policies shall: (a) where appropriate, name the County, the County's Board of Commissioners, employees and agents and, at the request of the County, the County's Mortgagees as additional insureds; (b) stipulate where appropriate that such insurance is primary and is not additional to any insurance carried by the County; (c) if appropriate, contain a waiver of subrogation provision as contemplated by Section 4.4; (d) contain within the policy or by endorsement a cross liability or severability of interest clause; and (e) provide that the insurance may not be cancelled without at least 30 days prior notice to the County. At the request of the County from time to time, a Developer will furnish to the County certificates of insurance evidencing the required insurance coverages. Any claims-made policy will include a tail of at least two years or evidence that the coverage remains in effect at least two years after completion of the matter which is the subject of the policy.

4.3 Adjustment of Minimum Limits. The minimum limits for the various insurance coverages provided for in Sections 4.1 and 4.2 are subject to adjustment to a higher amount as a Developer or the County may reasonably require from time to time, taking into account amounts currently carried with respect to comparable properties in the Cincinnati metropolitan area, provided that as a condition of increasing any such limits, the Party requiring such increase must, as a condition of such increase, increase the limits of the corresponding insurance coverages carried or required to be carried by it to at least the same limits.

4.4 Waiver of Subrogation. To the extent permitted by law, each of Developers and the County waives and releases the other from any and all liability for any loss or damage caused by fire, any of the extended coverage casualties, or other casualties insured against or required to be insured against (including by self-insurance), even if such fire or other casualty shall be brought about by the fault or negligence of the Party benefited by the release or its agents. Each of Developers and the County shall have its insurance policies issued in such form as to waive any right of subrogation as might otherwise exist.

65

5.1.2 Total Loss to Banks Improvements But Not to Parking Facility Segment. If a Casualty causes a Total Loss to a Developer's Banks Improvements within an Air Lot but does not cause a Total Loss to the Parking Facility Segment below such Air Lot, then the following provisions of this Section 5.1.2 shall apply:

(a) The applicable Developer shall hire a demolition contractor to demolish the remaining portions of the applicable Banks Improvements, including the return of the applicable Banks Property to a safe and sanitary condition and, pending the return of such Banks Improvements, appropriate sealing of any openings in the applicable Podium. Such demolition contractor shall be subject to the prior written approval of the County, which the County will not unreasonably withhold. If the County determines to keep the Parking Facility Segment below the applicable Air Lot open for business to the public during the demolition of the applicable Banks Improvements: (i) the applicable Developer shall take reasonable safety measures to control the effects of the demolition of such Banks Improvements on the use and enjoyment of the applicable Parking Facility Segment by Parking Property Permittees; (ii) the applicable Developer shall keep the applicable Parking Facility Segment, including but not limited to all public entrances to and driveways of such Parking Facility Segment, unobstructed and free of demolition debris; and (iii) the applicable Developer shall be responsible to the County for any liabilities, losses, damages, costs or expenses suffered or incurred by the County caused by demolition activities with respect to such Banks Improvements, including but not limited to any claims made by any Parking Property Permittees related to such demolition activities.

(b) If, after demolition of any Banks Improvements, the applicable Developer desires to rebuild such Banks Improvements, then such Developer shall proceed with the design and reconstruction of such Banks Improvements in accordance with the provisions of Sections 2.5 and 2.9, to the extent reasonably applicable.

(c) If (i) within two years after completion of demolition of any Banks Improvements, the applicable Developer has not Commenced reconstruction of such Banks Improvements in accordance with Section 5.1.2(b), and (ii) the applicable Service Agreement has not expired, the Public Parties may, at any time prior to expiration of such Service Agreement that such Developer has not Commenced such reconstruction, give written notice to such Developer to convey the subject Development Lot(s) to or at the direction of the Public Parties. If the Public Parties have the right to and do give such a written notice to a Developer to convey the subject Development Lot(s), such notice shall constitute a "Reconveyance Notice" under Section 7 of the applicable Service Agreement and shall be subject to the terms and conditions thereof. Conveyance of a Development Lot by a Developer to or at the direction of the Public Parties pursuant to this Section 5.1.2(c) and Section 7 of the applicable Service Agreement shall be by limited warranty deed, free and clear of all liens and encumbrances other than real property taxes, payments in lieu of real property taxes and installments of assessments not due and payable, this Declaration, the applicable Service Agreement, the General Declaration, easements, covenants, conditions and restrictions of record subject to which such Development Lot was

conveyed to such Developer, and other easements, covenants, conditions and restrictions of record granted by such Developer in good faith.

5.1.3 Partial Loss to Banks Improvements. If a Casualty causes a Partial Loss to a Developer's Banks Improvements, such Developer shall repair the damage to such Banks Improvements with reasonable promptness; provided that such Developer may, at its option exercisable by written notice given to the County within six months after the Casualty, elect to demolish such Banks Improvements. In repairing the damage to its Banks Improvements after a Partial Loss, the applicable Developer shall be subject to the provisions of Section 2.9, to the extent reasonably applicable. If a Developer elects to demolish its Banks Improvements after a Partial Loss as provided above, then the Partial Loss shall be treated as a Total Loss and the provisions of Section 5.1.2(a), (b) and (c) shall apply.

5.1.4 Minor Loss to Banks Improvements. If a Casualty causes a Minor Loss to a Developer's Banks Improvements, such Developer shall repair the damage to such Banks Improvements with reasonable promptness; provided that such Developer shall not be required by this Declaration to repair any damage to its Banks Improvements that does not materially interfere with the use and operation of the Parking Facility Segment below the applicable Air Lot. In repairing the damage to its Banks Improvements after a Minor Loss, the applicable Developer shall be subject to the provisions of Section 2.9, to the extent reasonably applicable.

5.1.5 Partial Loss or Minor Loss to Parking Facility Segment. If a Casualty causes a Partial Loss or a Minor Loss to a Parking Facility Segment, then the County shall repair the damage to such Parking Facility Segment with reasonable promptness; provided that the County shall not be required by this Declaration to repair any damage to a Parking Facility Segment that does not materially interfere with the use and operation of the Banks Improvements above such Parking Facility Segment or the use and enjoyment of any of the Developer's Excessments or the rights and easements of a Developer under the Parking Agreement. In repairing any damage to a Parking Facility Segment, the County shall be subject to the provisions of Section 2.6, to the extent reasonably applicable.

5.2 Voluntary Demolition.

5.2.1 Banks Improvements.

(a) Each Developer may voluntarily demolish its Banks Improvements, subject to the provisions of this Section 5.2.1. The demolition contractor for any such demolition shall be subject to the prior written approval of the County, which the County will not unreasonably withhold. Each Developer shall take appropriate safety measures to control the effects of the demolition of its Banks Improvements on the use and enjoyment of the Parking Facility Segment below such Banks Improvements by Parking Property Permittees, and shall keep all public entrances to the Parking Facility unobstructed and free of demolition debris. Each Developer shall be responsible to the County for any damage to the Parking Facility caused

by demolition activities with respect to its Banks Improvements, and shall hold the County harmless from and against any and all liabilities, losses, damages and claims by or to third parties for bodily injury, death or property damage, and costs and expenses, including reasonable attorneys' fees, in connection with, arising from or related to any such demolition activities.

(b) If, after demolition of any Banks Improvements, the applicable Developer desires to rebuild such Banks Improvements, then Developer shall proceed with the design and reconstruction of such Banks Improvements in accordance with the provisions of Sections 2.3 and 2.9, to the extent reasonably applicable.

(c) If (i) within two years after completion of demolition of any Banks Improvements, the applicable Developer has not Commenced reconstruction of such Banks Improvements in accordance with Section 5.2.1(b), and (ii) the applicable Service Agreement has not expired, the Public Parties may, at any time prior to expiration of such Service Agreement, that such Developer has not Commenced such reconstruction, give written notice to such Developer to convey the subject Development Lot(s) to or at the direction of the Public Parties. If the Public Parties have the right to and do give such a written notice to the applicable Developer to convey the subject Development Lot(s), such notice shall constitute a "Reconveyance Notice" under Section 7 of the applicable Service Agreement and shall be subject to the terms and conditions thereof. Conveyance of a Development Lot by a Developer to or at the direction of the Public Parties pursuant to this Section 5.2.1(c) and Section 7 of the applicable Service Agreement shall be by limited warranty deed, free and clear of all liens and encumbrances other than real property taxes, payments in lieu of real property taxes and installments of assessments not due and payable, this Declaration, the applicable Service Agreement, the General Declaration, easements, covenants, conditions and restrictions of record subject to which such Development Lot was conveyed to such Developer, and other easements, covenants, conditions and restrictions of record granted by such Developer in good faith.

5.2.2 Parking Facility Segment. In the absence of a Casualty causing a Total Loss to a Parking Facility Segment, for so long as a Parking Facility Segment is needed to provide adequate support for the Banks Improvements above such Parking Facility Segment and Developers do not abandon use of such Banks Improvements, the County may not voluntarily demolish such Parking Facility Segment. In conjunction with the demolition of any Banks Improvements, the County may voluntarily demolish the portion of a Parking Facility Segment below such Banks Improvements, in which event the provisions of clauses (a) and (b) of Section 5.1.1 shall apply.

ARTICLE 6 EASEMENTS

6.1 Easements in Parking Property for Benefit of Banks Property. There are hereby established and created, and the County hereby grants to each Developer, easements in the Parking Property for the benefit of such Developer's Banks Property, as set forth below in this

Section 6.1 (collectively, the "Developer Easements"), on and subject to the terms and conditions set forth herein.

6.1.1 Construction Easement. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Parking Property as reasonably necessary to facilitate construction work on such Developer's Banks Improvements. This easement shall be in effect for the benefit of each Developer during the period of construction of any of such Developer's Banks Improvements and during the period of any reconstruction of any of such Developer's Banks Improvements as contemplated by Article 5. The use of this easement shall be subject to all of the conditions of Section 2.9.4. In addition, the use of this easement shall be at the applicable Developer's risk, and subject to all Legal Requirements. Without limiting the generality of the immediately preceding sentence, the County has no responsibility to a Developer or a Developer's employees, agents, contractors, guests or invitees for risks arising from existing conditions of the Parking Facility in connection with the use of this easement.

6.1.2 Maintenance, Repair and Alteration Easement. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Parking Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform the maintenance and repair obligations of such Developer pursuant to Section 5.2.2; and (b) facilitate alterations of such Developer's Banks Improvements. Each Developer shall use this easement in such a manner as to minimize interference with the operation of the Parking Facility, to the extent practical, and shall be responsible to the County for any lost parking revenues due to parking spaces which are not usable as a result of the use of this easement by or for the benefit of such Developer.

6.1.3 Utility Easement. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual easement to use those portions of the Parking Property designed therefor to install, use, maintain, repair and replace utility facilities serving such Developer's Banks Property.

6.1.4 Storm Water Drainage Easement. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual easement for the drainage of storm water from such Developer's Banks Property through storm sewers, ditches and pipes in the Parking Property designed therefor to public facilities provided for storm water drainage.

6.1.5 Support Easement. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual easement in the Parking Property for support of such Developer's portion of each Pedium and such Developer's Banks Improvements, as designed in accordance with the process set forth in Sections 2.3 and 2.5. The portions of the Parking Facility subject to such easement shall be the structural support columns and such other

support structures of the Parking Facility as are designed for support of the Podiums and the Banks Improvements.

6.1.6 Passenger Elevators and Stairwells. There is established and created, and the County grants to each Developer, a perpetual easement to use the Passenger Elevators and Stairwells within the Parking Property for pedestrian access by Banks Property Permittees between the Parking Facility and such Developer's Banks Property in connection with their use of parking spaces in the Parking Facility. Such easement shall be exclusive, as to the Private Elevators, and non-exclusive, as to the Public Elevator and the Shared Elevator. The County may establish and amend reasonable rules and regulations for the use, maintenance and repair of the Public Elevator, Shared Elevator and Stairwells. Each Developer will comply with all such rules and regulations as to the Public Elevator, the Shared Elevator and those of the Stairwells serving such Developer's Banks Property.

6.1.7 Access Drives and Ramps. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual easement to use the Access Drives and Ramps within the Parking Property for vehicular access (but not parking) by Banks Property Permittees between the Parking Facility and such Developer's Banks Property in connection with their use of parking spaces in the Parking Facility. The County may establish and amend reasonable rules and regulations for the use, maintenance and repair of the Access Drives and Ramps. Each Developer will comply with all such rules and regulations as to these Access Drives and Ramps serving such Developer's Banks Property.

6.1.8 Easement for Encroachment. There is established and created, and the County grants to each Developer, an exclusive, perpetual easement for the encroachment of such Developer's portion of each Podium and such Developer's Banks Improvements, as constructed, in the Parking Property arising by reason of: (a) the design of each Podium and such Developer's Banks Improvements as contemplated by the Podium Plans and the applicable Banks Plans, respectively; (b) nonmaterial deviations in the Parking Facility as constructed from the Parking Facility Plans; (c) deviations in a Podium as constructed from the Podium Plans; (d) nonmaterial deviations in such Developer's Banks Improvements as constructed from the applicable Banks Plans; or (e) shifting, settlement or movement of the Parking Facility, a Podium or such Developer's Banks Improvements after construction that does not result from a deviation in such Developer's Banks Improvements as constructed from the applicable Banks Plans.

6.1.9 Easement to Enter to Cure Defaults. There is established and created, and the County grants to each Developer, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter the Parking Property from time to time, upon reasonable prior notice except in the case of an emergency, for the purpose of performing any obligation to such Developer with respect to the Parking Property which the County is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). A Developer shall use this

easement in such a manner as to minimize interference with the operation of the Parking Facility, to the extent practical.

6.1.10 Additional Easements. Each Developer may from time to time request additional easements in the Parking Property for the benefit of such Developer's Banks Property, to permit such Developer to install, use, maintain, repair and replace components and equipment serving such Developer's Banks Property (other than utility facilities, which are the subject of Section 6.1.3). The County shall consider such requests in good faith, and, provided that the County determines, in the County's reasonable discretion, that any such requested easement (a) would not eliminate or interfere with the use of any parking spaces in the Parking Facility, (b) would not materially adversely affect any traffic pattern in the Parking Facility, (c) would not materially increase the cost of constructing or operating the Parking Facility, and (d) would not otherwise materially adversely affect the use, operation or appearance of the Parking Facility, the County shall grant such easement to the requesting Developer on and subject to such terms as the County may reasonably require (other than any fee or other compensation). Any easement granted by the County to a Developer pursuant to this Section 6.1.10 shall be a Developer Easement.

6.1.11 Provisions Applicable Generally to Developer Easements. The following provisions shall apply generally to all of the Developer Easements, except to the extent inconsistent with specific provisions set forth in Sections 6.1.1-6.1.10:

(a) The Developer Easements do not authorize any Banks Property Permittee to materially interfere with or delay: (i) any construction, maintenance or repair of the Parking Facility by the County; (ii) the day-to-day normal operation of the Parking Facility; or (iii) the use of the Parking Property or the County Easements by the Parking Property Permittees.

(b) Each Developer shall be responsible for any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorneys' fees, arising from the use of the Developer Easements by any Banks Property Permittee with respect to such Developer's Banks Property, except to the extent that the negligence or willful misconduct of any Parking Property Permittee causes or contributes to such liability, loss, damage, claim, cost or expense. Each Developer shall maintain or cause to be maintained sufficient liability and excess liability insurance to cover the matters which are the subject of such hold harmless agreement.

(c) If any Banks Property Permittee damages the Parking Property in using a Developer Easement, the applicable Developer will promptly repair or cause to be repaired such damage, subject, however, to any applicable waiver of claim or subrogation provision herein or in any applicable insurance policy.

(d) The Developer Easements do not authorize any Banks Property Permittee to use the Developer Easements other than for their intended purposes, in a safe and proper manner, in compliance with all Legal Requirements, and in such a manner as not to damage the Parking Property.

6.2.1 Construction Easement. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter such Developer's Banks Property as reasonably necessary to facilitate construction work on the Parking Facility and to construct the Podiums. This easement shall be in effect during the period of construction of the Parking Facility and the Podiums and during any period of reconstruction of the Parking Facility as contemplated by Article 5. The use of this easement shall be at the County's risk, and subject to all Legal Requirements.

6.2.2 Maintenance, Repairs and Alteration Easement. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter such Developer's Banks Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary to: (a) perform the maintenance and repair obligations of the County pursuant to Section 5.5.1; and (b) facilitate alterations of the Parking Facility. The County shall use this easement in such a manner as to minimize interference with the operation of the applicable Banks Improvements, to the extent practical.

6.2.3 Utility Easement. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual easement to use those portions of such Developer's Banks Property below the top of a Podium, and those portions of such Developer's Banks Property above the top of a Podium designed therefor, to install, use, maintain, repair and replace utility facilities serving the Parking Property.

6.2.4 Intake and Exhaust. There is established and created, and each Developer grants to the County, an exclusive, perpetual easement to use the intake and exhaust shafts designed in such Developer's portion of a Podium and in such Developer's Banks Property to intake air and vent exhaust from the Parking Facility.

6.2.5 Passenger Elevators and Stairwells. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual easement to use the Public Elevator, Shared Elevator and those of the Stairwells (and associated Headhouses) extending between and through the Parking Property and such Developer's Banks Property for pedestrian access between the Parking Property and such Developer's Banks Property, and a non-exclusive, perpetual easement to use the portions of such Developer's Banks Property designed therefor for pedestrian access between the Public Elevator, Shared Elevator and Stairwells, on the one hand, and the public rights-of-way adjacent to such Developer's Banks Property, on the other hand.

6.2.6 Access Drives and Ramps. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual easement to use the Access Drives and Ramps within such Developer's Lot 26 Banks Property for vehicular access (but not parking) between the public rights-of-way to which the Access Drives and Ramps extend, on the one hand, and the Lot 26 Parking Property, on the other hand.

74

(e) The County may from time to time relocate the Developer Easements established by Sections 6.1.3, 6.1.4 and 6.1.6, provided that: (i) the County gives at least 90 days prior written notice of the relocation to the applicable Developer (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) the County pays the expenses reasonably incurred by the applicable Developer in connection with the relocation; and (iii) the relocation does not materially, adversely affect or interfere with such Developer's use of such Developer Easement or such Developer's Banks Improvements.

(f) The Developer Easements shall benefit the Banks Property and shall burden the Parking Property. However, the benefit of each Developer Easement that burdens the Lot 16 Parking Property shall be limited to the Lot 16 Banks Property, the burden of each Developer Easement that burdens the Lot 16 Banks Property shall be limited to the Lot 16 Parking Property, the benefit of each Developer Easement that burdens the Lot 26 Parking Property shall be limited to the Lot 26 Banks Property, and the burden of each Developer Easement that benefits the Lot 26 Banks Property shall be limited to the Lot 26 Parking Property.

(g) The Developer Easements, including those which are stated as being perpetual, shall be: (i) terminated to the extent that, after a Parking Facility Segment suffers a casualty loss as described in Section 5.1.1 or is voluntarily demolished as permitted by Section 5.2.2, this Declaration terminates in accordance with Section 5.1.1(b); (ii) modified if, after a Parking Facility Segment suffers a casualty loss as described in Section 5.1.1 or is voluntarily demolished as permitted by Section 5.2.2, the County rebuilds only such elements of such Parking Facility Segment as are necessary to support the Banks Improvements above such Parking Facility Segment (the modification to reflect the changed nature of such Parking Facility Segment); (iii) suspended to the extent that a Parking Facility Segment suffers a casualty loss as described in Section 5.1.1 and is rebuilt, pending the rebuilding (provided that the Developer Easements may be used to the extent necessary or appropriate to facilitate the repair or rebuilding of the Banks Improvements above such Parking Facility Segment); and (iv) suspended if a Parking Facility Segment suffers a casualty loss as described in Section 5.1.5, to the extent that the damage or repair thereof interferes with the use and enjoyment of the Developer Easements, pending repair of the damage.

(h) There shall be no third party beneficiaries of the Developer Easements, other than Banks Property Permittees.

6.3 Easements in Banks Property for Benefit of Parking Property. There are hereby established and created, and each applicable Developer hereby grants to the County, easements in such Developer's Banks Property for the benefit of the Parking Property, as set forth below in this Section 6.2 (collectively, the "County Easements"), on and subject to the terms and conditions set forth herein.

73

6.2.7 Easement for Easements. There is established and created, and each Developer grants to the County, an exclusive, perpetual easement for the encroachment of the Parking Facility as constructed pursuant to the Parking Facility Plans in such Developer's Banks Property arising by reason of: (a) the design of the Parking Facility as contemplated by the Parking Facility Plans; or (b) nonmaterial deviations in the Parking Facility as constructed from the Parking Facility Plans.

6.2.8 Easement in Order to Cure Defaults. There is established and created, and each Developer grants to the County, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement to enter such Developer's Banks Property from time to time, upon reasonable prior written notice except in the case of an emergency, for the purpose of performing any obligation with respect to such Developer's Banks Property (including but not limited to a Waterproofing System) which such Developer is required to perform under this Declaration, but fails or refuses to perform in a timely manner (taking into account any applicable notice and grace periods). The County shall use this easement in such a manner as to minimize interference with the operation of the applicable Developer's Banks Improvements, to the extent practical.

6.2.9 Provisions Applicable Generally to County Easements. The following provisions shall apply generally to all of the County Easements, except to the extent inconsistent with specific provisions set forth in Sections 6.2.1-6.2.8:

(a) The County Easements do not authorize any Parking Property Permittee to materially interfere with or delay: (i) any construction, maintenance or repair of the Banks Improvements by a Developer; (ii) the day-to-day normal operation of the Banks Improvements; or (iii) the use and operation of the Banks Improvements or the use and enjoyment of any of the Developer Easements or the rights and easements of a Developer under the Parking Agreement.

(b) The County shall be responsible for any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorneys' fees, arising from the use of the County Easements by any Parking Property Permittee, except to the extent that the negligence or willful misconduct of any Banks Property Permittee causes or contributes to such liability, loss, damage, claim, cost or expense. The County shall maintain or cause to be maintained sufficient liability and excess liability insurance to cover the matters which are the subject of such hold harmless agreement.

(c) If any Parking Property Permittee damages the Banks Property in using a County Easement, the County will promptly repair or cause to be repaired such damage.

(d) The County Easements do not authorize any Parking Property Permittee to use the County Easements other than for their intended purposes, in a safe and proper

manner, in compliance with all Legal Requirements, and in such a manner as not to damage the Banks Property.

(e) A Developer may from time to time relocate the County Easements in such Developer's Banks Property established by Sections 6.2.3, 6.2.4 and 6.2.5, provided that: (i) such Developer gives at least 90 days prior written notice of the relocation to the County (or, in the case of an emergency or special circumstances, such shorter period of notice as is reasonable under the circumstances); (ii) such Developer pays the expenses incurred by the County in connection with the relocations; and (iii) the relocation does not materially, adversely affect or interfere with the County's use of such County Easement or the Parking Facility.

(f) The County Easements shall benefit the Parking Property and shall burden the Banks Property. However, the benefit of each County Easement that burdens the Lot 16 Banks Property shall be limited to the Lot 16 Parking Property, the burden of each County Easement that benefits the Lot 16 Parking Property shall be limited to the Lot 16 Banks Property, the benefit of each County Easement that burdens the Lot 26 Banks Property shall be limited to the Lot 26 Parking Property, and the burden of each County Easement that benefits the Lot 26 Parking Property shall be limited to the Lot 26 Banks Property.

(g) There shall be no third party beneficiaries of the County Easements, other than Parking Property Permittees.

6.3 Easements in Banks Property for Benefit of City. There are hereby established and created, and each Developer hereby grants to the City, easements in such Developer's Banks Property as set forth below in this Section 6.3 (collectively, the "City Easements"), on and subject to the terms and conditions set forth herein.

6.3.1 Sidewalk Easement. There is established and created, and Phase 1A Developer grants to the City, a non-exclusive, perpetual easement in and to that portion of Lot 26B-1A comprising the Sidewalk Easement Area (as defined below) for the benefit of the public, for the purpose of the clear and unobstructed use of the sidewalks from time to time located in the Sidewalk Easement Area as public sidewalks. As used herein, the "Sidewalk Easement Area" shall mean that portion of Lot 26B-1A as initially constructed in accordance with the Street Grid/Utility Plans and as shown on Exhibit L herein. Phase 1A Developer shall maintain the sidewalks subject to this easement within Lot 26B-1A in accordance with Legal Requirements.

6.3.2 Inspection, Maintenance and Repair Easement. There is established and created, and each Developer grants to the City, a non-exclusive, perpetual (but intended for temporary use from time to time for the purposes set forth below) easement, for the benefit of the City, to enter such Developer's Banks Property from time to time, upon reasonable prior notice except in the case of an emergency, as reasonably necessary or appropriate to inspect the City-Maintained Portion of each Podium to determine the need for the performance of, and to

perform, the maintenance and repair obligations of the City pursuant to Section 3.5.1. The City shall use this easement in such a manner as to minimize interference with the operation of the applicable Banks Improvements, to the extent practical.

ARTICLE 7 REIMBURSABLE PRIVATE PARKING COSTS

7.1 Developer Parking Spaces. Phase 1A Developer anticipates constructing approximately 200 Developer Parking Spaces within Lot 26B-1A as part of the Phase 1A Improvements (the "Anticipated Developer Parking Spaces"). Neither Developer presently anticipates constructing any Developer Parking Spaces other than the Anticipated Developer Parking Spaces, but either Developer may, subject to the other terms and conditions of this Declaration, construct Developer Parking Spaces other than the Anticipated Developer Parking Spaces ("Additional Developer Parking Spaces") within its Development Lots. The applicable Developer shall initially pay the costs of designing and constructing any Developer Parking Spaces, including those of such costs that are Reimbursable Private Parking Costs. Upon the completion of any Developer Parking Spaces, the applicable Developer shall submit to the Public Parties an accounting of the number of such Developer Parking Spaces that are Eligible Private Parking Spaces and, with respect to such Eligible Private Parking Spaces, the amount of the Reimbursable Private Parking Costs, together with reasonably detailed backup documentation supporting such accounting (the "Final Accounting"). The Public Parties shall reimburse the applicable Developer for Reimbursable Private Parking Costs in accordance with Section 7.1.1 or Section 7.1.2, as applicable.

7.1.1 Anticipated Developer Parking Spaces. The Public Parties shall reimburse Phase 1A Developer for Reimbursable Private Parking Costs in respect of the Anticipated Developer Parking Spaces in five installments, on and subject to the following terms and conditions:

- (a) Phase 1A Developer may invoice the Public Parties for the first installment, in the amount of \$700,000, at such time that Phase 1A Developer has (i) achieved 30% Completion of the Anticipated Developer Parking Spaces including completion of the parking deck structure within Lot 26B-1A and (ii) Completed the transfer slab between the retail and residential portions of the Phase 1A Improvements within Lot 26B-1A.
- (b) Phase 1A Developer may invoice the Public Parties for the second installment, in the amount of \$700,000, at such time that Phase 1A Developer has (i) achieved 60% Completion of the Anticipated Developer Parking Spaces, (ii) Completed the transfer slab between the retail and residential portions of the Phase 1A Improvements within Lot 16B-1A and (iii) Commenced the wood framing, the mechanical, electrical and plumbing rough-in, and the subfloor of the residential portions of the Phase 1A Improvements within Lot 26B-1A.

(c) Phase 1A Developer may invoice the Public Parties for the third installment, in the amount of \$700,000, at such time that Phase 1A Developer has (i) achieved 70% Completion of the Anticipated Developer Parking Spaces, (ii) Commenced the roof framing, the roof and the building skin of the residential portions of the Phase 1A Improvements within Lot 26B-1A and (iii) commenced the wood framing, the mechanical, electrical and plumbing rough-in and the building skin of the residential portions of the Phase 1A Improvements within Lot 16B-1A.

(d) Phase 1A Developer may invoice the Public Parties for the fourth installment, in the amount of \$700,000, at such time that Phase 1A Developer has (i) achieved 80% Completion of the Anticipated Developer Parking Spaces and (ii) achieved 50% Completion of the residential portions of the Phase 1A Improvements within each of Lot 26B-1A and Lot 16B-1A, with the structures Complete, the masonry and glass 50% Complete and the interior finishes Commenced.

(e) Phase 1A Developer may invoice the Public Parties for the fifth installment, in the amount of \$400,000, at such time that Phase 1A Developer has (i) achieved Completion of the Anticipated Developer Parking Spaces and (ii) achieved 75% Completion of the residential portions of the Phase 1A Improvements within each of Lot 26B-1A and Lot 16B-1A, with the structures Complete, the building skin Complete and the interior finishes progressing.

(f) The installments of Reimbursable Private Parking Costs in respect of the Anticipated Developer Parking Spaces provided for above, in the total amount of \$3,200,000, are based on an assumption that the actual Reimbursable Private Parking Costs in respect of the Developer Parking Spaces within Lot 26B-1A will be \$3,200,000. Notwithstanding the foregoing assumption, the actual Reimbursable Private Parking Costs in respect of the Developer Parking Spaces within Lot 26B-1A shall be determined in accordance with the other terms and conditions of this Declaration based on the actual number of such Developer Parking Spaces and the actual costs of designing and constructing such Developer Parking Spaces. If the Final Accounting discloses that the actual Reimbursable Private Parking Costs in respect of the Developer Parking Spaces within Lot 26B-1A are different than \$3,200,000, then the installments due upon or after the Final Accounting shall be adjusted accordingly and, to the extent that such adjustments do not reconcile the payments made by the Public Parties with the actual Reimbursable Private Parking Costs, either Phase 1A Developer shall make a reconciling payment to the Public Parties or the Public Parties shall make a reconciling payment to Phase 1A Developer, as applicable.

(g) Subject to Section 7.1(h), each invoice for an installment of Reimbursable Private Parking Costs shall be due within 30 days after receipt; provided that if, within 30 days after receipt, the Public Parties contest an invoice in good faith and in writing, the Public Parties shall, pending resolution of such contest, be required to pay only the uncontested portion of such invoice.

establishes an intentional misstatement of Reimbursable Private Parking Costs, in which event such Developer shall reimburse the Public Parties for the reasonable cost of the audit.

7.4 Financing. The Public Parties acknowledge and agree that each Developer may finance all or portions of the cost of any Developer Parking Spaces (including, without limitation, Reimbursable Private Parking Costs) with a third party lender other than a Qualified Mortgage (each a "Parking Lender"). In any such event, the Public Parties agree, for the benefit of any such Parking Lender, that the Public Parties will perform their obligations under Section 7.1. The Public Parties, upon request, shall execute, acknowledge and deliver to any such Parking Lender an agreement, in such form as shall be reasonably satisfactory to the Parking Lender and the Public Parties, by and between the Public Parties, the applicable Developer and such Parking Lender, agreeing to the provisions of this Section 7.4. The applicable Developer shall pay all reasonable costs and expenses incurred by the Public Parties in connection with the preparation and/or execution of such agreement.

ARTICLE III DEFERRED PURCHASE PRICE

8.1 Determination and Payment of Deferred Purchase Price. Neither Developer paid any purchase price to the Public Parties upon the conveyance of the Phase 1A Lots and the Phase 1B Lots by the City to Phase 1A Developer and Phase 1B Developer, respectively. However, each Ownership Entity shall pay the Deferred Purchase Price to the Public Parties in accordance with this Article 8. Each Ownership Entity shall, at any time that it makes any Distribution, provide a written accounting to the Public Parties of such Distribution setting forth a breakdown of the Distribution as among a return of the Equity Investment, the Cumulative Preferred Return and Net Distributions, as applicable, and shall pay to the Public Parties, as an installment of the Deferred Purchase Price for the Development Asset of such Ownership Entity, 15% of the Net Distributions, if any.

8.2 General Provisions Regarding Deferred Purchase Price.

8.2.1 Accounting. Each Ownership Entity shall keep and maintain complete and accurate books and records regarding its Development Asset in accordance with generally accepted accounting principles consistently applied. Without limiting the generality of the immediately preceding sentence, each Ownership Entity's books and records for its Development Asset shall be kept separately from the books and records for any other property and shall account for all elements necessary to determine the Deferred Purchase Price for the subject Development Asset. At the request of a Public Party from time to time, each Ownership Entity shall furnish to the Public Parties a written accounting of the elements affecting the determination of the Deferred Purchase Price for a Development Asset, covering such periods and in such detail as a Public Party may reasonably request.

(b) The Public Parties' shall pay any applicable installment of Reimbursable Private Parking Costs in respect of the Anticipated Developer Parking Spaces to Phase 1A Developer as set forth above so long as: (i) the Public Parties have not given a Default Notice as to which any default by a Developer identified therein remains uncured; (ii) such installment shall not result in the Public Parties having paid amounts to Phase 1A Developer pursuant to this Section 7.1.1 in excess of the actual Reimbursable Private Parking Costs then incurred by Phase 1A Developer; and (iii) construction of the Phase 1A Improvements is progressing in a manner generally consistent with the applicable timing requirements set forth in Section 2.9.

7.1.2 Additional Developer Parking Spaces. The Public Parties shall reimburse the applicable Developer for Reimbursable Private Parking Costs (if any) in respect of any Additional Developer Parking Spaces within 60 days after receipt of the applicable Final Accounting; provided that if, within 60 days after receipt, the Public Parties contest such Final Accounting in good faith and in writing, the Public Parties shall, pending resolution of such contest, be required to pay only the uncontested portion of the Reimbursable Private Parking Costs.

7.2 Dedicated Parking Spaces. The County shall initially pay the Parking Facility Costs, including the Dedicated Parking Costs. Developers shall make Developers' Public Parking Contribution in accordance with Section 2.6.4. The County shall invoice the applicable Developer for the Dedicated Parking Costs associated with its Air Lot which are not Reimbursable Private Parking Costs, together with reasonably detailed backup documentation supporting the invoiced amount of Dedicated Parking Costs, and such Developer shall pay such invoice within 60 days after receipt.

7.3 Audit Rights. Each Developer shall keep complete and detailed records, with copies of all invoices, payment applications, architect's certificates, affidavits and other records relevant to the Reimbursable Private Parking Costs attributable to Developer Parking Spaces, for a period of not less than three years after submission of the applicable invoices for payment to the Public Parties. Each Developer shall make such records available to the Public Parties at a location in Cincinnati, Ohio reasonably convenient for the Public Parties. The Public Parties shall have the right, within one year after a Developer submits to the Public Parties an invoice for Reimbursable Private Parking Costs pursuant to Section 7.1, to audit such Developer's books and records relating to the invoiced Reimbursable Private Parking Costs. If any such audit establishes that such Developer has overstated Reimbursable Private Parking Costs as invoiced, the invoices shall be corrected on the basis of such audit, and if such Developer has been overpaid for Reimbursable Private Parking Costs, such Developer shall promptly pay the amount of such overpayment to the Public Parties. The cost of any audit of a Developer's books and records performed pursuant to this Section 7.3 shall be borne by the Public Parties, unless the audit

8.2.3 Audit Rights. The Public Parties shall have the right from time to time, but not more frequently than once in any calendar year, to audit each Ownership Entity's books and records. If any such audit reflects that an Ownership Entity has underpaid the Deferred Purchase Price to the Public Parties for a Development Asset, then, except to the extent that the Ownership Entity disputes the results of the audit in good faith, the Ownership Entity shall promptly pay the amount of such underpayment to the Public Parties. The cost of any audit of an Ownership Entity's books and records performed pursuant to this Section 8.2.3 shall be borne by the Public Parties, unless the audit establishes (after opportunity for the Ownership Entity to dispute the results of the audit) an intentional understatement of the Deferred Purchase Price, in which event the Ownership Entity shall reimburse the Public Parties for the reasonable cost of the audit.

8.2.3 Reimbursement of Deferred Purchase Price. If, at any time after the payment of any installment of the Deferred Purchase Price, the owners of the Ownership Entity for any reason (a) make any Equity Investment in the Ownership Entity related to the Development Asset with respect to which the Deferred Purchase Price was paid, or (b) repay any Distributions by the Ownership Entity (any such Equity Investment or repayment of Distributions, a "Subsequent Payment"), the Public Parties shall repay to the Ownership Entity, within 10 days after request therefor by the Ownership Entity, that portion of the Deferred Purchase Price theretofore received by the Public Parties equal to the Repayment Share (as defined below) of such Subsequent Payment. For the purposes of this Section 8.2.3, each Subsequent Payment shall be considered a repayment to the Ownership Entity of the most recent Deferred Purchase Price, and payments by the Ownership Entity on account of Distributions by the Ownership Entity, and payments by the Ownership Entity on account of Deferred Purchase Price, immediately prior to such Subsequent Payment, in an aggregate amount equal to the Subsequent Payment (in each instance, the "Immediate Previous Payments"); and the "Repayment Share" of each such Subsequent Payment shall be equal to that portion of the Immediate Previous Payments received by the Public Parties as Deferred Purchase Price.

8.2.4 Termination of Deferred Purchase Price Obligations. The obligation to pay the Deferred Purchase Price with respect to each Development Asset shall be the obligation of each Ownership Entity of such Development Asset until, as applicable, (a) if the Development Asset is not a Condominium Property, the closing of a Qualified Sale of such Development Asset with the Banks Improvements thereto Complete, or (b) if the Development Asset is a Condominium Property with the subject Banks Improvements Complete or (ii) the closing of a Qualified Sale which is a bulk sale of all previously unsold condominium units of such Condominium Property with the subject Banks Improvements Complete (the closing described in clause (a) or (b), as applicable, with respect to a Development Asset being called a "Deferred Purchase Price Termination Event"). The obligation to pay the Deferred Purchase Price with respect to the subject Development Asset shall be the obligation of the Ownership Entity that was the seller in the Deferred Purchase Price Termination Event, but not any subsequent Ownership Entity. However, notwithstanding the above provisions of this Section 8.2.4 to the contrary, upon the closing of (x) the sale of a Development Asset which is not a Condominium Property,

(y) the sale of the last condominium unit of a Condominium Property, or (z) the bulk sale of all previously unsold condominium units of a Condominium Property which is not a Deferred Purchase Price Termination Event (i.e., either the closing occurs prior to Completion of the subject Banks Improvements, or the sale is not a Qualified Sale), the transferor Ownership Entity shall remain obligated to pay the Deferred Purchase Price with respect to the transferor's Net Distributions, even though the obligation to pay the Deferred Purchase Price is blanding on the transferee Ownership Entity with respect to the transferor's Net Distributions. At the request of an Ownership Entity upon or after the occurrence of a Deferred Purchase Price Termination Event, the Public Parties shall execute a release of the subject Development Asset from the obligation to pay the Deferred Purchase Price, in the form of Exhibit M hereto.

ARTICLE 9 **TRANSFERS**

9.1 Transfer of Equity Interests. Without the prior written consent of the Public Parties, which consent shall not be unreasonably withheld, prior to the Completion of the Banks Improvements to any Development Lot, the applicable Developer shall not permit or suffer any change of control (defined below) of such Developer. As used herein, "change of control" means, with respect to a Developer, a change in the ownership of such Developer such that one or more of any combination of the Control Persons do not in the aggregate have the power to direct or cause the direction of the management and policies of such Developer, whether through the ownership of ownership interests in such Developer, by contract, or otherwise; provided that a change of control shall not be considered to have occurred solely by reason of the death or incompetency of any individual.

9.2 Transfer of Development Lots. An Ownership Entity shall not Transfer any interest in its Development Lot prior to the Completion of the Banks Improvements thereto, other than (a) to an Affiliate of such Ownership Entity or to an Affiliate of a Principal in accordance with Section 9.2.1; (b) to an Affiliate of a Qualified Third Party Developer in accordance with Section 9.2.2; (c) the granting of a Mortgage to an institutional lender to secure financing for the construction of Banks Improvements to such Development Lot; (d) a Transfer in connection with, or in lieu of, the exercise by the holder of any Mortgage described in the immediately preceding clause (c) of its rights or remedies thereunder; (e) the granting of utility easements and other easements related to the development or use of the Banks Improvements; and (f) leases to future occupants of space within Banks Improvements being constructed or to be constructed on such Development Lot. There shall be no restrictions on the Transfer of a Development Lot after completion of all of the Banks Improvements to such Development Lot. Any Transfer of a Development Lot, whether before or after the Completion of the Banks Improvements thereto, shall be subject to this Declaration, which shall run with the land.

9.2.1 Transfers to Affiliates Prior to Completion of Banks Improvements. An Ownership Entity may Transfer a Development Lot to an Affiliate of such Ownership Entity

or to an Affiliate of a Principal prior to Completion of the Banks Improvements thereto, on and subject to the following terms and conditions:

(a) if the transferee Affiliate is not an Affiliate of Carter or Dawson, then either (i) such transferee Affiliate, or an Affiliate of such transferee Affiliate, shall have been approved (or deemed approved) by the Public Parties as a Qualified Third Party Developer, or (ii) such transferee Affiliate shall have engaged as developer for such Development Lot, and such Development Lot shall be developed through, either (x) an Affiliate of Carter or Dawson or (y) a third party developer approved (or deemed approved) by the Public Parties as a Qualified Third Party Developer;

(b) the transferee Affiliate shall expressly assume the obligations of the transferor under this Declaration as they relate to such Development Lot, including but not limited to the obligation to pay the Deferred Purchase Price as provided in Article 8, pursuant to an assumption agreement in form and substance reasonably satisfactory to each Public Party;

(c) upon such assumption by the transferee Affiliate, the Public Parties shall, upon request, release the transferor from its obligations under this Declaration as they relate to such Development Lot; and

(d) the Transfer shall be subject to this Declaration, the General Declaration, the applicable Service Agreement and the provisions of the Development Deed encumbering such Development Lot.

9.2.3 Transfers to Affiliates of Qualified Third Party Developers Prior to Completion of Banks Improvements. An Ownership Entity may Transfer a Development Lot to an Affiliate of a third party developer which is neither an Affiliate of such Ownership Entity nor an Affiliate of a Principal prior to completion of the Banks Improvements thereto, on and subject to the following terms and conditions:

(a) each Public Party shall have approved (or shall be deemed to have approved) such proposed third party developer as a Qualified Third Party Developer in accordance with Section 9.2.3 (whereupon the proposed transferee that is an Affiliate of the Qualified Third Party Developer shall be a "Qualified Transferee");

(b) the Qualified Transferee shall expressly assume the obligations of the transferor under this Declaration as they relate to such Development Lot, including but not limited to the obligation to pay the Deferred Purchase Price as provided in Article 8, pursuant to an assumption agreement in form and substance reasonably satisfactory to each Public Party;

(c) upon such assumption by the Qualified Transferee, the Public Parties shall, upon request, release the transferor from its obligations under this Declaration as they relate to such Development Lot; and

(d) the Transfer shall be subject to this Declaration, the General Declaration, the applicable Service Agreement and the provisions of the Development Deed encumbering such Development Lot.

9.2.3 Approval of Qualified Third Party Interests. A Developer may from time to time request the Public Parties to approve a prospective third party developer which is not an Affiliate of Carter or Dawson as a Qualified Third Party Developer. Any such request shall be in writing, and the applicable Developer will support any such request with detailed and documented information about the background, experience and financial resources of such third party developer to enable the Public Parties to make an informed decision as to whether such third party developer has the experience and financial resources appropriate for the development of the Development Lot which such third party developer is being proposed to develop. In considering whether to approve a proposed third party developer as a Qualified Third Party Developer, the Public Parties may consider the experience of the third party developer with projects of similar size, scope and nature as the development to be undertaken, the ability of the third party developer to complete in a timely manner the Banks Improvements to be undertaken, the reputation of the third party developer within the industry, and the sufficiency of the creditworthiness, economic strength and financial status of the third party developer to perform the obligations to be assumed. The Public Parties will respond to any written request by a Developer to approve a prospective third party developer as a Qualified Third Party Developer within 30 days after the written request (with supporting information), and will not unreasonably withhold such approval. The determination as to whether to approve or disapprove a prospective third party developer as a Qualified Third Party Developer may be made by the City Manager, on behalf of the City, and the County Administrator, on behalf of the County, without further action by the City Council or the County Board of Commissioners. If either Public Party fails to respond to any written request by a Developer to approve a prospective third party developer as a Qualified Third Party Developer within the 30 day period provided in this Section, such Developer may, at any time before such Public Party responds to such Developer's request (or after such 30 day period), give a written reminder notice to the Public Parties reminding the non-responding Public Party(ies) of the obligation to respond in accordance with this Section 9.2.3, and if the non-responding Public Party(ies) fails to respond within ten business days after such reminder notice, such Public Party(ies) shall be deemed to have approved the proposed third party developer as a Qualified Third Party Developer.

9.3 Qualified Mortgages/Mortgages. A Mortgage with respect to all or any portion of the Banks Property which registers with the Public Parties by giving the Public Parties written notice of the existence of its Mortgage and specifying the name and address of such Mortgagee shall be a "Banks Qualified Mortgage," and its Mortgage shall be a "Banks Qualified Mortgage." A Mortgagee with respect to all or any portion of the Banks Property which registers with the Public Parties by giving Developers written notice of the existence of its Mortgage and specifying the name and address of such Mortgagee shall be a "Parking Qualified Mortgage," and its Mortgage shall be a "Parking Qualified Mortgage."

9.4 Rights of Banks Qualified Mortgagees/Mortgages. So long as any Banks Qualified Mortgage shall remain unsatisfied of record as to a Development Lot, the following provisions shall apply to such Banks Qualified Mortgage:

9.4.1 The Public Parties, upon giving a Developer any Commencement Delay Notice, Completion Delay Notice or Default Notice, shall also give a copy of such notice to each applicable Banks Qualified Mortgagee, in accordance with the provisions of Section 9.4.7. Any applicable Banks Qualified Mortgagee shall have the right to cure or remedy the failure which is the subject of such Commencement Delay Notice, Completion Delay Notice or Default Notice within 30 days after the same was required to have been cured or remedied by the applicable Developer, or cause the failure which is the subject of such Commencement Delay Notice, Completion Delay Notice or Default Notice to be cured or remedied within 30 days after the same was required to have been cured or remedied by the applicable Developer, and the Public Parties shall accept such performance by or at the instance of such Banks Qualified Mortgagee as if the same had been performed by the applicable Developer.

9.4.2 Notwithstanding anything to the contrary set forth in this Declaration, the Public Parties shall not exercise any remedies by reason of any Commencement Delay Notice, Completion Delay Notice or Default Notice given by the Public Parties to a Developer if all steps reasonably required to cause the same shall have been commenced, in good faith, within the time permitted therefor, and shall be prosecuted to completion with diligence and continuity.

9.4.3 Further, notwithstanding anything to the contrary set forth in this Declaration, except to the extent that a Banks Qualified Mortgagee expressly waives in writing its rights under this Section 9.4.3, the Public Parties shall not exercise any remedies by reason of any Commencement Delay Notice, Completion Delay Notice or Default Notice unless the Public Parties have first given to each applicable Banks Qualified Mortgagee written notice of the Public Parties' intent to do so and permitted such Banks Qualified Mortgagee(s) a reasonable time (not in excess of 180 days) thereafter within which either (a) to obtain possession of the Development Lot(s) subject to such Banks Qualified Mortgage (including possession by a receiver), or (b) to institute and prosecute with diligence judicial foreclosure proceedings or foreclosure pursuant to power of sale. Any matter not reasonably susceptible of being cured by such Banks Qualified Mortgagee while not in title to the subject Development Lot(s) shall be deemed to have been waived as to such Banks Qualified Mortgagee by the Public Parties until completion of such foreclosure proceedings or acquisition in lieu of foreclosure, and any matter which is reasonably susceptible of being cured after such completion or acquisition shall then be cured with reasonable diligence.

9.4.4 Any applicable Banks Qualified Mortgagee, or its designee, or other purchaser at foreclosure, may acquire the subject Development Lot(s) through such foreclosure proceedings or by conveyance thereof in lieu of foreclosure. However, any subsequent Transfer made prior to Completion of the Banks Improvements to the subject Development Lot(s) shall be

made only to an Affidavit of a Qualified Third Party Developer approved by the Public Parties in accordance with Section 9.2.1, provided that the Public Parties shall not unreasonably withhold approval of a Qualified Third Party Developer proposed by such Banks Qualified Mortgagee or other purchaser at foreclosure.

9.4.5 The Public Parties, upon request, shall execute, acknowledge and deliver to any Banks Qualified Mortgagee an agreement, in such form as shall be reasonably satisfactory to the Banks Qualified Mortgagee and the Public Parties, by and between the Public Parties, the applicable Developer and such Banks Qualified Mortgagee, agreeing to all of the provisions of this Section 9.4. The applicable Developer shall pay all reasonable costs and expenses incurred by the Public Parties in connection with the preparation and/or execution of such agreement.

9.4.6 No Banks Qualified Mortgagee or its designee shall in any manner or respect whatsoever be liable or responsible for any of a Developer's duties, obligations, liabilities and responsibilities under this Declaration, unless and until such Banks Qualified Mortgagee, or its designee, becomes the owner of the subject Development Lot(s) by foreclosure, conveyance in lieu of foreclosure or otherwise, in which event such Banks Qualified Mortgagee, or its designee, shall be and remain liable for such duties, obligations, liabilities and responsibilities only in respect of such Development Lot(s) and only so long as it remains the owner of such Development Lot(s).

9.4.7 Any notice or other communication which the Public Parties shall desire or are required to give to any Banks Qualified Mortgagee shall be in writing and shall be given in accordance with Section 13.2 to such Banks Qualified Mortgagee at its address as specified in writing and delivered to the Public Parties pursuant to Section 9.3, or at such other address as shall be designated by such Banks Qualified Mortgagee by written notice given to the Public Parties in accordance with Section 13.2.

9.5 Rights of Parking Qualified Mortgage/Mortgages. So long as any Parking Qualified Mortgage shall remain unsatisfied of record as to all or any portion of the Parking Property, the following provisions shall apply to such Parking Qualified Mortgage:

9.5.1 Each Developer, upon giving the County any Default Notice, shall also give a copy of such notice to each Parking Qualified Mortgagee, in accordance with the provisions of Section 9.5.6. Any Parking Qualified Mortgagee shall have the right to cure or remedy the failure which is the subject of such Default Notice within 30 days after the same was required to have been cured or remedied by the County, or cause the failure which is the subject of such Default Notice to be cured or remedied within 30 days after the same was required to have been cured or remedied by the County, and each Developer shall accept such performance by or at the instance of such Parking Qualified Mortgagee as if the same had been performed by the County.

9.5.2 Notwithstanding anything to the contrary set forth in this Declaration, a Developer shall not exercise any remedies by reason of any Default Notice given by such Developer

to the County if all steps reasonably required to cure the same shall have been commenced, in good faith, within the time permitted therefor, and shall be prosecuted to completion with diligence and continuity.

9.5.3 Further, notwithstanding anything to the contrary set forth in this Declaration, except to the extent that a Parking Qualified Mortgagee expressly waives in writing its rights under this Section 9.5.3, a Developer shall not exercise any remedies by reason of any Default Notice unless such Developer has first given to each Parking Qualified Mortgagee written notice of such Developer's intent to do so and permitted such Parking Qualified Mortgagee(s) a reasonable time (not in excess of 180 days) thereafter within which either (a) to obtain possession of the Parking Property subject to such Parking Qualified Mortgage (including possession by a receiver), or (b) to institute and prosecute with diligence judicial foreclosure proceedings or foreclosure pursuant to power of sale. Any number not reasonably susceptible of being cured by such Parking Qualified Mortgagee while not in title to the Parking Property shall be deemed to have been waived as to such Parking Qualified Mortgagee by the applicable Developer until completion of such foreclosure proceedings or acquisition in lieu of foreclosure; and any manner which is reasonably susceptible of being cured after such completion or acquisition shall then be cured with reasonable diligence.

9.5.4 Any Parking Qualified Mortgagee, or its designee, or other purchaser at foreclosure, may acquire the Parking Property through such foreclosure proceedings or by conveyance thereof in lieu of foreclosure. However, any subsequent conveyance of the Parking Property made prior to completion of the Parking Facility shall be made only to a commercial real estate developer approved by Developers as having the experience and financial resources appropriate for the completion of the Parking Facility, provided that Developers shall not unreasonably withhold, condition or delay such approval.

9.5.5 No Parking Qualified Mortgagee or its designee shall in any manner or respect whatsoever be liable or responsible for any of the County's duties, obligations, liabilities and responsibilities under this Declaration, unless and until such Parking Qualified Mortgagee, or its designee, becomes the owner of the Parking Property by foreclosure, conveyance in lieu of foreclosure or otherwise, in which event such Parking Qualified Mortgagee, or its designee, shall be and remain liable for such duties, obligations, liabilities and responsibilities only so long as it remains the owner of the Parking Property.

9.5.6 Any notice or other communication which a Developer shall desire or is required to give to any Parking Qualified Mortgagee shall be in writing and shall be given in accordance with Section 13.2 to such Parking Qualified Mortgagee at its address as specified in writing and delivered to such Developer pursuant to Section 9.3, or at such other address as shall be designated by such Parking Qualified Mortgagee by written notice given to Developers in accordance with Section 13.2.

9.6 Modifications Requested by Mortgagees. The Parties agree to modify this Declaration from time to time, upon request, for the purpose of incorporating herein such additional mortgagee protective provisions as may be reasonably and customarily requested by any Qualified Mortgagee; provided, however, that such modifications do not result in modifications to the obligations of the Parties hereunder in any material respect, and are not inconsistent with any of the terms and conditions of this Declaration in any material respect.

ARTICLE 10 ADDITIONAL PROVISIONS

10.1 Banks Parking Facilities. Developers understand that the County intends that the Parking Facility will be a part of, and integrated with, the Banks Parking Facilities. However, the County is not obligated by this Declaration to construct any portion of the Banks Parking Facilities other than the Parking Facility, or to integrate the Parking Facility with the Banks Parking Facilities, and this Declaration does not establish any rights in Developers or any Banks Property Permitted in any portion of the Banks Parking Facilities other than the Parking Facility.

10.2 Third Party Rights in Parking Facility. Subject to the restrictions and limitations set forth in the Parking Agreement, the County may grant to third parties such easements and other rights with respect to the Parking Property as are not inconsistent with the Developer Easements, any other rights granted to Developers under this Declaration, or any separate agreement between the County and a Developer.

10.3 Continuing Effect of General Declaration. The Air Lots are subject to the General Declaration of Covenants, Conditions and Restrictions by the Public Parties, dated on or about even date herewith, to be recorded in the Recorder's Office, Hamilton County, Ohio (the "General Declaration"). The General Declaration shall continue in full force and effect, and this Declaration shall not supersede nor replace the General Declaration.

10.4 Relationship to Master Development Agreement. This Declaration is entered into pursuant to and in furtherance of the Master Development Agreement. However, the Master Development Agreement does not create any obligations binding on Developers or the Banks Property not embodied in this Declaration, and this Declaration, the General Declaration, the Service Agreements and any other pertinent documents which are recorded in the Recorder's Office, Hamilton County, Ohio, with respect to the Banks Property shall constitute all of the obligations binding on Developers or the Banks Property in respect of the subject matter of the Master Development Agreement.

10.5 Consistency of Public Parties. Actions of the Public Parties pursuant to this Declaration shall be independent of, and in addition to, regulatory actions of the Public Parties under Legal Requirements with respect to matters which are the subject of this Declaration. For example, approval by the City of a Banks Design Change pursuant to Section 2.9.2 shall be

independent of, and shall not excuse Developer from obtaining, any regulatory approvals applicable to such Banks Design Change under Legal Requirements.

10.6 Additional Declarations. Developers may subject the Phase 1A Lots and the Phase 1B Lots (both collectively and individually) to additional declarations of easements, covenants, conditions and restrictions (including, without limitation, condominium declarations), and nothing in this Declaration shall prohibit or preclude any such additional declarations.

10.7 County Rights to Enforce Service Agreements. The Service Agreements include obligations of each "Owner" (as defined in the Service Agreements) to pay "PILOT" and, other than with respect to the Phase 1B Lots, "Minimum Service Payments" (as defined in the Service Agreements). In the event that the City fails to enforce its rights to receive the PILOTs or Minimum Service Payments under the Service Agreements in a reasonably prudent manner in light of all the circumstances at any such time, and such failure to enforce or to commence to enforce continues for a period of 30 days after written notice from the County to the City to cure such failure, then the County shall have the right to enforce on the City's behalf the obligations of each Owner under the Service Agreements to the extent the City fails to enforce such rights, including the payment of PILOTs and, if applicable, Minimum Service Payments, as required by and in the manner directed by the Service Agreements; provided that any collections of PILOTs and, if applicable, Minimum Service Payments, by the County shall be paid to the City.

ARTICLE II REPRESENTATIONS

11.1 Representations by Phase 1A Developer. Phase 1A Developer represents to the Public Parties as follows:

11.1.1 Phase 1A Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has full power and authority to enter into and carry out the terms of this Declaration.

11.1.2 This Declaration has been duly authorized, executed and delivered by Phase 1A Developer and constitutes the legal, valid and binding obligation of Phase 1A Developer enforceable in accordance with its terms.

11.1.3 Neither the entry into nor the performance of and compliance with this Declaration has resulted or will result in any violation of, or a conflict with or a default under, the organizational and governing documents of Phase 1A Developer, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Phase 1A Developer or any of Phase 1A Developer's property is bound, or any statute, rule or regulation applicable to Phase 1A Developer.

11.1.4 There is no action, proceeding or investigation pending or, so far as Phase 1A Developer knows, threatened, which, questions, directly or indirectly, the validity or enforceability of this Declaration or any action taken or to be taken pursuant to this Declaration, or which might result in any material adverse change in the condition (financial or otherwise) or business of Phase 1A Developer.

11.2 Representations by Phase 1B Developer. Phase 1B Developer represents to the Public Parties as follows:

11.2.1 Phase 1B Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has full power and authority to enter into and carry out the terms of this Declaration.

11.2.2 This Declaration has been duly authorized, executed and delivered by Phase 1B Developer and constitutes the legal, valid and binding obligation of Phase 1B Developer enforceable in accordance with its terms.

11.2.3 Neither the entry into nor the performance of and compliance with this Declaration has resulted or will result in any violation of, or a conflict with or a default under, the organizational and governing documents of Phase 1B Developer, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Phase 1B Developer or any of Phase 1B Developer's property is bound, or any statute, rule or regulation applicable to Phase 1B Developer.

11.2.4 There is no action, proceeding or investigation pending or, so far as Phase 1B Developer knows, threatened, which, questions, directly or indirectly, the validity or enforceability of this Declaration or any action taken or to be taken pursuant to this Declaration, or which might result in any material adverse change in the condition (financial or otherwise) or business of Phase 1B Developer.

11.3 Representations by the County. The County represents to Developers as follows:

11.3.1 The County has full power and authority to enter into and carry out the terms of this Declaration.

11.3.2 This Declaration has been duly authorized, executed and delivered by the County and constitutes the legal, valid and binding obligation of the County enforceable in accordance with its terms.

11.3.3 Neither the entry into nor the performance of and compliance with this Declaration has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which the

County or any of the County's property is bound or any statute, rule or regulation applicable to the County.

11.3.4 There is no action, proceeding or investigation pending or, so far as the County knows, threatened, which questions, directly or indirectly, the validity or enforceability of this Declaration or any action taken or to be taken pursuant to this Declaration.

11.4 Representations by the City. The City represents to Developers as follows:

11.4.1 The City has full power and authority to enter into and carry out the terms of this Declaration.

11.4.2 This Declaration has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

11.4.3 Neither the entry into nor the performance of and compliance with this Declaration has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which the City or any of the City's property is bound or any statute, rule or regulation applicable to the City.

11.4.4 There is no action, proceeding or investigation pending or, so far as the City knows, threatened, which questions, directly or indirectly, the validity or enforceability of this Declaration or any action taken or to be taken pursuant to this Declaration.

ARTICLE 12 ENFORCEMENT

12.1 Default Notices. At any time as of which there exists a default under this Declaration by or through a Public Party, a Developer and any Mortgagee of the Banks Property may give such Public Party a notice which identifies such default and sets forth a period of time for the cure of such default; provided that if such notice is directed to the County and the applicable Developer has received written notice of the name and address of a Mortgagee of the Banks Property, then such Developer shall also give a copy of such notice to such Mortgagee of the Banks Property. At any time as of which there exists a default under this Declaration by or through a Developer, the County, the City and any Mortgagee of the Banks Property may give such Developer a notice which identifies such default and sets forth a period of time for the cure of such default; provided that if the Public Party giving such notice has received written notice of the name and address of a Mortgagee of such Developer's Banks Property, then such Public Party shall also give a copy of such notice to such Mortgagee of such Developer's Banks Property. Any notice given pursuant to the above provisions of this Section 12.1 is called a "Default Notice." The period of time for cure to be set forth in any Default Notice shall be such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure

the default, provided that such period shall not be less than ten days for a monetary default nor less than 30 days for a non-monetary default.

12.2 Enforcement. Each Party shall have the right to enforce this Declaration in any manner provided by law or equity. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing Party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. Default under any of the terms of this Declaration shall give each non-defaulting Party a right of action in any court of competent jurisdiction to compel compliance and/or to prevent the default. The above provisions of this Section 12.2 shall be subject to (a) Section 2.12 if the subject matter of the alleged default is a Construction Dispute, (b) Section 2.9.5(d) with respect to Phase 1A Commencement Defaults, (c) Section 2.9.5(e) with respect to Phase 1B Commencement Defaults, (d) Section 2.9.6(b) with respect to Phase 1A Completion Defaults, and (e) Section 2.9.6(c) with respect to Phase 1B Completion Defaults. Notwithstanding the above provisions of this Section 12.2 to the contrary, one Public Party may not enforce this Declaration as against a Developer in a manner inconsistent with enforcement by the other Public Party.

12.3 Self-Help. Without limiting the provisions of Section 12.2, (a) should any defaulting Party fail to remedy any default identified in a Default Notice within the reasonable cure period specified in such Default Notice, or (b) should any default under this Declaration exist which (i) constitutes or creates an immediate threat to health or safety, or (ii) constitutes or creates an immediate threat of damage to or destruction of property, then, in any such event, the non-defaulting Party(ies) shall have the right, but not the obligation, to enter upon the property of the defaulting Party(ies) to take such steps as such non-defaulting Party(ies) may elect to cure, or cause to be cured, such default. If a non-defaulting Party cures, or causes to be cured, a default as provided above in this Section 12.3, then there shall be due and payable by the defaulting Party to each non-defaulting Party upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party in pursuing such cure, plus interest thereon from the date of demand at the rate of 12% per annum.

12.4 Liens. Until fully paid, any past due payment obligations of the County or a Developer under this Declaration shall, upon the filing of a notice thereof in the appropriate land records, constitute a lien against the interest of such Party in the Parking Property or the applicable Banks Property, as applicable, for the full amount of such unpaid obligations. Upon proper payment, the Party that filed any such lien promptly shall cause such lien to be released of record. The priority of any lien imposed against the interest of the County or a Developer in the Parking Property or the applicable Banks Property, as applicable, pursuant to this Section 12.4 shall be based upon the time of recording, provided that such lien shall in any event be subordinate to the lien of the holder of any bona fide Mortgage on such interest.

**ARTICLE 13
GENERAL PROVISIONS**

13.1 External Certification. Each Party (the "Responding Party") shall, from time to time, within ten days after written request by another Party (the "Requesting Party"), execute and deliver to the Requesting Party and/or such third party designated by the Requesting Party a statement in writing certifying (a) that (except as may be otherwise specified by the Responding Party) (i) this Declaration is presently in full force and effect and unmodified, (ii) the Responding Party is not in default in the performance or observance of its obligations under this Declaration, and (iii) to the Responding Party's actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party's obligations under this Declaration, and (b) as to such other factual matters as the Requesting Party may reasonably request about this Declaration, the status of any matter relevant to this Declaration, or the performance or observance of the provisions of this Declaration.

13.2 Notices. Any notice to be given under this Declaration shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as each Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery:

If to the County:

Hamilton County Administrator
138 East Court Street, Room 603
Cincinnati, OH 45202
Telecopy: (513) 946-4444
Telephone: (513) 946-4400

with a copy to:

Hamilton County Prosecutor's Office
230 E. Ninth Street, 8th Floor
Cincinnati, Ohio 45202
Attn: Roger E. Friedmann, Esq.
Telecopy: 513-946-3018
Telephone: 513-946-3025

and

Vorpy, Saret, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, Ohio 45202
Attn: Thomas L. Gabelman, Esq.
Telecopy: 513-852-7843
Telephone: 513-723-8580

If to the City:

City of Cincinnati, Ohio
801 Plum Street, Room 152
Cincinnati, OH 45202
Attn: City Manager
Telecopy: 513-352-3241
Telephone: 513-352-6284

with a copy to:

City of Cincinnati, Ohio
801 Plum Street, Room 214
Cincinnati, OH 45202
Attn: City Solicitor
Telecopy: 513-352-3234
Telephone: 513-352-1515

If to Phase 1A Developer:

Rivertanks Renaissance Phase 1-A Owner, LLC
c/o Carter & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363
Attn: A. Trent Germino, Vice Chairman
Telecopy: (404) 888-4311
Telephone: (404) 888-3156

and

Rivertanks Renaissance Phase 1-A Owner, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30300
Attn: Jerome Hagley, Executive Vice President
Telecopy: (404) 347-8040
Telephone: (404) 446-3561

and

Leadstar, Inc.
9830 Colonade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Legal Department
Telecopy: (210) 579-1035
Telephone: (210) 641-8468

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest Lakmont Greer, Esq.
Telecopy: (678) 553-2212
Telephone: (678) 553-2420

and

Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
Attn: M. Andrew Kauxs, Esq.
Telecopy: (404) 941-3262
Telephone: (404) 815-6620

IF to Phase IB Developer:

Riverbanks Renaissance Phase IB Owner, LLC
c/o Carz & Associates Commercial Services L.L.C.
171 17th Street, Suite 1200
Atlanta, GA 30363
Attn: A. Trent Germano, Vice Chairman
Telecopy: (404) 888-4311
Telephone: (404) 888-3156

and

Riverbanks Renaissance Phase IB Owner, LLC
c/o Harold A. Dawson Co., Inc.
191 Peachtree Street, Suite 805
Atlanta, GA 30303
Attn: Jerome Hagley, Executive Vice President
Telecopy: (404) 347-8040
Telephone: (404) 446-3561

and

US Real Estate Limited Partnership
9830 Colonade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Legal Department
Telecopy: (210) 579-1035
Telephone: (210) 641-8468

with a copy to:

Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, GA 30327
Attn: Ernest Lakmont Greer, Esq.
Telecopy: (678) 553-2212
Telephone: (678) 553-2420

and

Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
Attn: M. Andrew Kauxs, Esq.
Telecopy: (404) 941-3262
Telephone: (404) 815-6620

13.3 Binding Effect: Duration. This Declaration shall run with the land (except as otherwise expressly provided in Section 8.2.4), shall bind and inure to the benefit of the Parties and their respective successors and assigns, and shall be enforceable as provided herein for a

term of 99 years from the effective date of this Declaration; provided that the easements established by this Declaration shall survive termination of this Declaration.

13.4 Amendments. This Declaration may be amended only by a writing signed by the Parties. Any such amendment to this Declaration shall become effective upon recordation in the Office of the Recorder of Hamilton County, Ohio.

13.5 Calculation of Time Periods. In computing any period of time set forth in this Declaration, the day of the act, event or notice after which the designated period of time begins to run is not included and the last day of the period so computed is included, unless such last day is not a business day, in which event the period of time shall run until the end of the next day which is a business day.

13.6 Severability. If any provision of this Declaration or its application to any party or circumstance shall to any extent be in violation of or unenforceable under any law, rule, regulation or order now existing or hereafter enacted or entered by any court or other governmental entity having jurisdiction, the remainder of this Declaration, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

13.7 Choice Of Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Ohio.

13.8 Jurisdiction and Venue. Subject to the provisions of Section 2.12 regarding Connection Disputes, all actions or proceedings arising in connection with this Declaration shall be tried and litigated only in state or federal courts located in Hamilton County, Ohio having subject matter jurisdiction over the matter in controversy. This choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 13.8.

13.9 Usage. Whenever used, the singular shall include the plural and the plural shall include the singular, and the use of any gender shall include all genders.

13.10 Captions. The captions to the Articles and Sections of this Declaration are included only for convenient reference, and shall not affect the meaning or interpretation of this Declaration.

13.11 Waiver. No failure on the part of a Party to give notice of default or to exercise any right or remedy hereunder shall operate as a waiver, except as specifically provided.

13.12 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be a duplicate original, but all of which shall constitute the same Declaration.

13.13 Third Parties. This Declaration may be enforced only by the Parties, their respective successors and assigns, and Mortgagees of any portion of a Ground Lot or an Air Lot, except as set forth in the immediately preceding sentence, there shall be no third party beneficiaries of this Declaration; provided that Banks Property Permitteds shall be entitled to the benefit of the Developer Easements, and Parking Property Permitteds shall be entitled to the benefit of the County Easements.

13.14 No Joint Liability. Each Developer shall only be liable and responsible for the duties, obligations, liabilities and responsibilities under this Declaration with respect to its Air Lot and the portion of the Podium located directly under its Air Lot. No Developer shall in any manner or respect whatsoever be liable or responsible for any of another Developer's duties, obligations, liabilities and responsibilities under this Declaration.

13.15 Release from Liability. Each Banks Property Owner and Parking Property Owner (a) shall be bound by this Declaration only with respect to the period that such Person is a Banks Property Owner or Parking Property Owner, as applicable, (b) shall be liable only for the obligations, liabilities or responsibilities with respect to their portion of the Banks Property or the Parking Property under this Declaration that accrue during such period, and (c) upon its conveyance (other than by Mortgage) of its Banks Property or the Parking Property, shall be released from any and all liabilities and obligations under this Declaration with respect to the property so conveyed which accrue after the date the instrument of conveyance is recorded in the Office of the Recorder of Hamilton County, Ohio.

13.16 Set Off. Each Developer and each Ownership Entity shall have the right to set off any amounts due and payable by the Public Parties to such Developer or such Ownership Entity under this Declaration against amounts due and payable by such Developer or such Ownership Entity to the Public Parties under this Declaration. The Public Parties shall have the right to set off any amounts due and payable by a Developer or an Ownership Entity to the Public Parties under this Declaration against amounts due and payable by the Public Parties to such Developer or such Ownership Entity under this Declaration.

(SIGNATURES BEGIN ON FOLLOWING PAGE)

The Parties have executed this Declaration as of the date first set forth above.

RIVERBANKS RENAISSANCE PHASE I-A OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-A Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-A Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: *A. Trent Germano*
A. Trent Germano, Authorized
Representative

RIVERBANKS RENAISSANCE PHASE I-B OWNER, LLC,
a Delaware limited liability company

By: **Riverbanks Renaissance Phase I-B Mezzanine, LLC,**
a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Joint Venture,**
LLC, a Delaware limited liability company, its sole Member

By: **Riverbanks Renaissance Phase I-B Equity,**
LLC, a Delaware limited liability company,
its Managing Member

By: *A. Trent Germano*
A. Trent Germano, Authorized
Representative

**THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO**

By: *Patrick Thompson*
Patrick Thompson, County Administrator

Approved as to Form:

Jeff Leach
Assistant County Prosecutor

THE CITY OF CINCINNATI, OHIO

Approved as to Form:

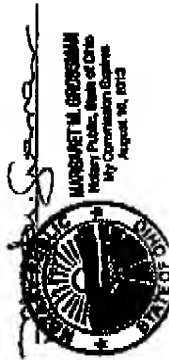
By: *Milton Doherty, Jr.*
Milton Doherty, Jr., City Manager

Deborah Will
Assistant City Solicitor

STATE OF OHIO
COUNTY OF HAMILTON, SS:

**CERTIFICATION OF
COMPLETION
NOT REQUIRED**

The foregoing instrument was acknowledged before me this 24 day of September, 2009, by A. Trent Germano, Authorized Representative of Riverbanks Renaissance Phase I-A Equity, LLC, the Managing Member of Riverbanks Renaissance Phase I-A Joint Venture, LLC, the sole Member of Riverbanks Renaissance Phase I-A Mezzanine, the sole Member of Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company, on behalf of the company.



STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 22 day of September, 2009, by A. Trent Germano, Authorized Representative of Riverbanks Renaissance Phase I-B Equity, LLC, the Managing Member of Riverbanks Renaissance Phase I-B Joint Venture, LLC, the sole Member of Riverbanks Renaissance Phase I-B Mezzanine, the sole Member of Riverbanks Renaissance Phase I-B Owner, LLC, a Delaware limited liability company, on behalf of the company.

Margaret M. Grossman
MARGARET M. GROSSMAN
Notary Public, State of Ohio
My Commission Expires
August 10, 2013

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 22 day of September, 2009, by Patrick Thompson, County Administrator of Hamilton County, Ohio, on behalf of The Board of County Commissioners of Hamilton County, Ohio.

Margaret M. Grossman
MARGARET M. GROSSMAN
Notary Public, State of Ohio
My Commission Expires
August 10, 2013

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 22 day of September, 2009, by Milton Dehoney, Jr., City Manager of the City of Cincinnati, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

Margaret M. Grossman
MARGARET M. GROSSMAN
Notary Public, State of Ohio
My Commission Expires
August 10, 2013

This instrument was prepared by:

Donald J. Shuller
Vorys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, OH 45202

EXHIBITS

EXHIBIT A-1 Site Plan (depicting Lot 16A, Lot 16B, Lot 26A and Lot 26B)
EXHIBIT A-2 Site Plan (depicting Lot 16B-1A and Lot 16B-1B)
EXHIBIT A-3 Legal Description of Lot 16B-1A and Lot 16B-1B
EXHIBIT A-4 Site Plan (depicting Lot 26B-1A and Lot 26B-1B)
EXHIBIT A-5 Legal Description of Lot 26B-1A and Lot 26B-1B
EXHIBIT B-1 Site Plan (depicting Banks Parking Facilities)
EXHIBIT B-2 Site Plan (depicting Banks Parking Facilities)
EXHIBIT C Banks-Related Elements of the Parking Property
EXHIBIT D-1 Site Plan (depicting Private Expansion Joists in Lot 16 Podium, City-Maintained Portion of Lot 16 Podium and Street Grid Expansion Joists in Lot 16 Podium)
EXHIBIT D-2 Site Plan (depicting Private Expansion Joists in Lot 26 Podium, City-Maintained Portion of Lot 26 Podium and Street Grid Expansion Joists in Lot 26 Podium)
EXHIBIT E Floor Plan of Parking Facility (depicting general location of Dedicated Parking Spaces)
EXHIBIT F-1 Site Plan (depicting Headhouses, Passenger Elevators, Stairwells, Ventilation Shafts, Access Drives and Ramps and Grease Traps in Lot 16 Podium)
EXHIBIT F-2 Site Plan (depicting Headhouses, Passenger Elevators, Stairwells, Ventilation Shafts, Access Drives and Ramps and Grease Traps in Lot 26 Podium)
EXHIBIT G Parking-Related Elements of the Banks Property
EXHIBIT H Structural Load Information
EXHIBIT I Parking Facility/Podium Design Documents
EXHIBIT J Street Grid/Utility Design Documents
EXHIBIT K-1 Certificate of Completion (Parking Facility)
EXHIBIT K-2 Certificate of Completion (Podium)
EXHIBIT K-3 Certificate of Completion (Phase 1A Improvements)
EXHIBIT K-4 Certificate of Completion (Phase 1B Improvements)
EXHIBIT L Site Plan (depicting Sidewalk Basement Area and Use Restitution Area)
EXHIBIT M Release From Deferred Purchase Price Obligation
EXHIBIT N Master Development Plan Revision

EXHIBIT O-1

Form of Notice Requesting Approval of Parking Facility Design Documents

EXHIBIT O-2

Form of Notice Requesting Approval of Pedium Design Documents

EXHIBIT O-3

Form of Notice Requesting Approval of Street Grid/Utility Design Documents

EXHIBIT O-4

Form of Notice Requesting Comments on Barbs Design Documents

EXHIBIT A-J

Site Plan Identifying Lot 16A, Lot 16B, Lot 26A and Lot 26B

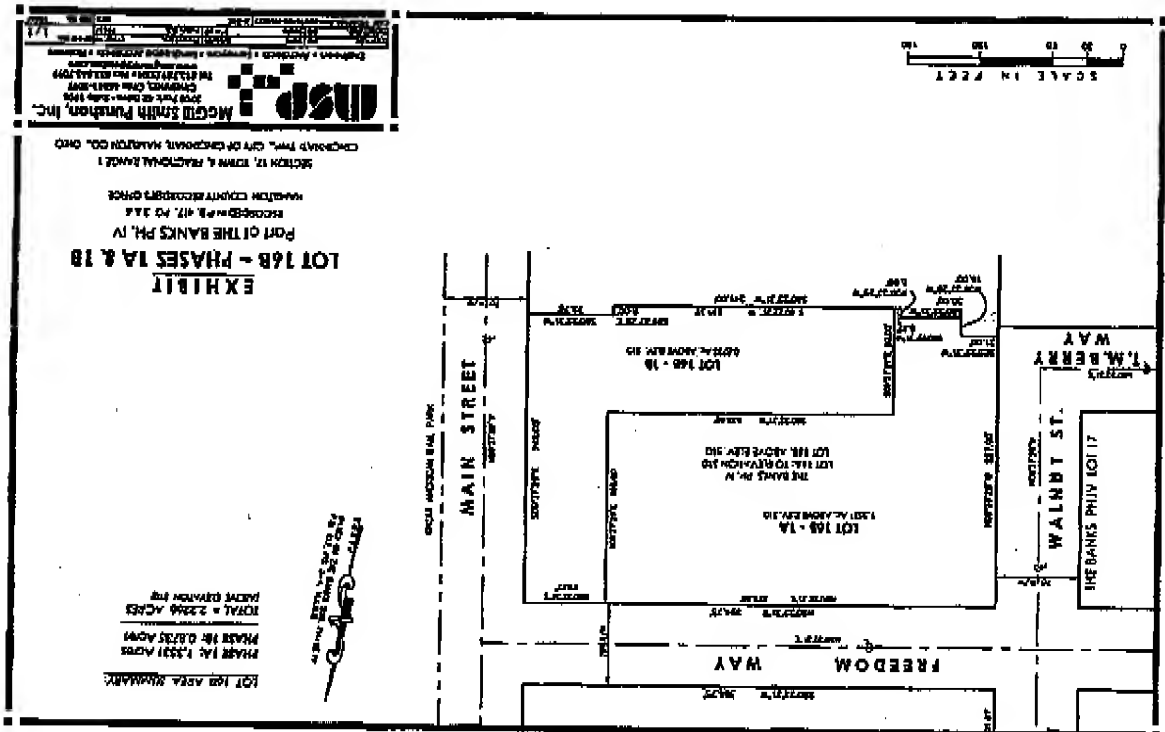


EXHIBIT A-2
 Site Plan (detailing Lot 14B-1A and Lot 14B-1B)

EXHIBIT A-3

Legal Description of Lot 16B-1A and Lot 16B-1B

Lot 16B-1A:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the south line of Freedom Way (a 70' right-of-way) with the east line of Walnut Street (a 70' right-of-way), said point also being the northwest corner of Lot 16B; thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 326.58 feet to a point; thence South 9°37'29" East, 160.00 feet to a point; thence South 80°22'31" West, 239.92 feet to a point; thence South 9°37'29" East, 90.00 feet to a point in a south line of aforesaid Lot 16B; thence along southerly lines of said Lot 16B the following five (5) courses and distances: South 80°22'31" West, 5.67 feet to a point; North 9°37'29" West, 8.00 feet to a point; South 80°22'31" West, 31.00 feet to a point; North 9°37'29" West, 15.00 feet to a point; and South 80°22'31" West, 31.00 feet to a point in the aforesaid east line of Walnut Street, said point also being the southwest corner of said Lot 16B; thence along said line of Walnut Street and the west line of said Lot 16B, North 9°37'29" West, 227.00 feet to the POINT OF BEGINNING; said tract of land containing 1.3531 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punston, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

Lot 16B-1B:

ALL THAT TRACT OR PARCEL of land situate in Section 17, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 16B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Freedom Way (a 70' right-of-way) and in the north line of said Lot 16B of The Banks Phase IV, said point being North 80°22'31" East, 326.58 feet

from the northwest corner of Lot 16B and also from the intersection of said south line of Freedom Way with the east line of Walnut Street (a 70' right-of-way); thence along said lines of Freedom Way and Lot 16B, North 80°22'31" East, 58.17 feet to the intersection of said south line of Freedom Way with the west line of Main Street (a 70' right-of-way); said point also being the northeast corner of said Lot 16B; thence along said lines of Main Street and Lot 16B, South 9°37'29" East, 242.00 feet to the southeast corner of said Lot 16B; thence along southerly lines of said Lot 16B the following three (3) courses and distances: South 80°22'31" West, 72.75 feet to a point; South 9°37'29" East, 8.00 feet to a point; and South 80°22'31" West, 235.33 feet to a point; thence North 9°37'29" West, 90.00 feet to a point; thence North 80°22'31" East, 239.92 feet to a point; thence North 9°37'29" West, 160.00 feet to the POINT OF BEGINNING; said tract of land containing 0.8715 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punston, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

EXHIBIT A-5

Legal Description of Lot 26B-1A and Lot 26B-1B

Lot 26B-1A:

ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point in the south line of Second Street (an undedicated right-of-way) and in the north line of said Lot 26B of The Banks Phase IV, said point being North 80°22'31" East, 132.50 feet from the northwest corner of Lot 26B and also from the intersection of said south line of Second Street with the east line of Walnut Street (a 70' right-of-way); thence along said line of Second Street and Lot 26B, North 80°22'31" East, 262.25 feet to the intersection of said south line of Second Street with the west line of Main Street (a 70' right-of-way); said point also being the northeast corner of said Lot 26B; thence along said lines of Main Street and Lot 26B, South 93°37'29" East, 285.08 feet to the intersection of said west line of Main Street with the north line of Freedom Way (a 70' right-of-way); said point also being the southeast corner of said Lot 26B; thence along said lines of Freedom Way and Lot 26B, South 80°22'31" West, 394.75 feet to the intersection of said north line of Freedom Way with the aforesaid east line of Walnut Street; said point also being the southwest corner of said Lot 26B; thence along said line of Walnut St. and west line of Lot 26B, North 93°37'29" West, 91.67 feet to a point; thence North 80°22'31" East, 132.50 feet to a point; thence North 93°37'29" West, 193.33 feet to the POINT OF BEGINNING; said tract of land containing 1.9946 acres of land above an elevation of 510 feet.

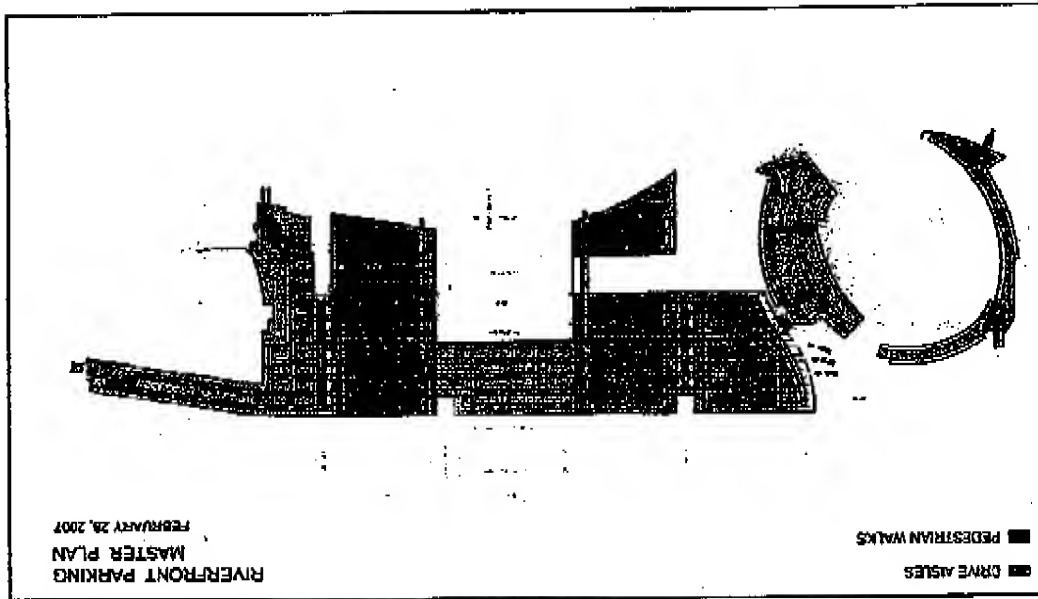
The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.

Lot 26B-1B:

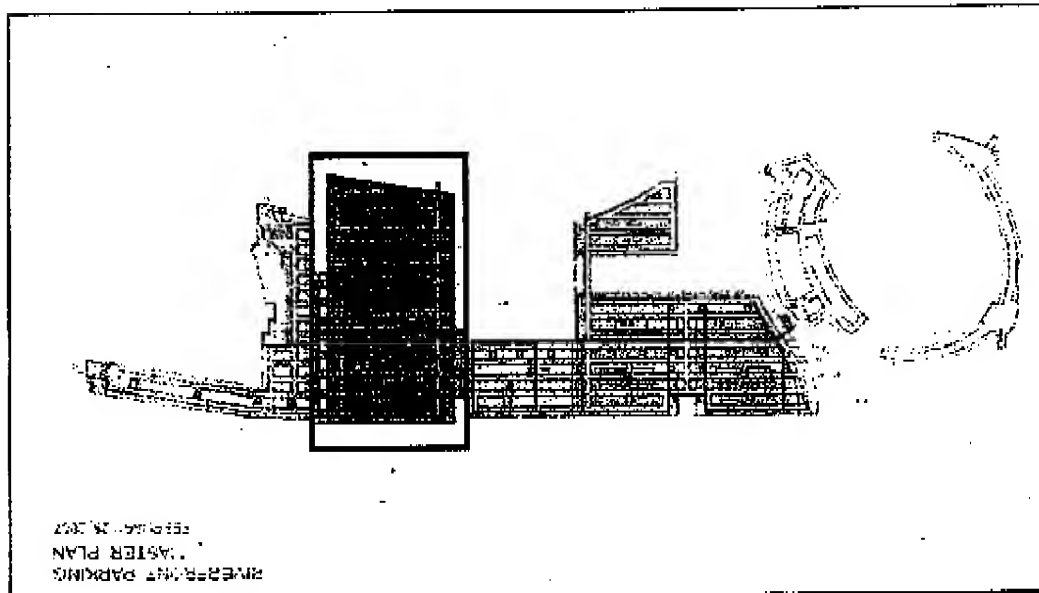
ALL THAT TRACT OR PARCEL of land situate in Sections 17 and 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio, and being part of Lot 26B of The Banks Phase IV as recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the south line of Second Street (an undedicated right-of-way) with the east line of Walnut Street (a 70' right-of-way), said point also being the northwest corner of said Lot 26B; thence along said lines of Second Street and Lot 26B, North 80°22'31" East, 132.50 feet to a point; thence South 93°37'29" East, 193.33 feet to a point; thence South 80°22'31" West, 132.50 feet to a point in the aforesaid east line of Walnut Street and also in the west line of said Lot 26B; thence along said lines of Walnut Street and Lot 26B, North 93°37'29" West, 193.33 feet to the POINT OF BEGINNING; said tract of land containing 0.3881 acres of land above an elevation of 510 feet.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated September 22, 2008. The bearings and elevations in the above description are based on The Banks Phase IV Record Plat recorded in Plat Book 417, Pages 3-4, Hamilton County Recorder's Office, which are based on the Ohio State Plane Coordinate System South Zone (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 29), original City of Cincinnati Benchmark No. 6919 & 6920.



**Banks Parking Facilities
Exhibit B-2**



**Parking Facility
Exhibit B-1**

EXHIBIT C

Backs-Related Elements of the Parking Property

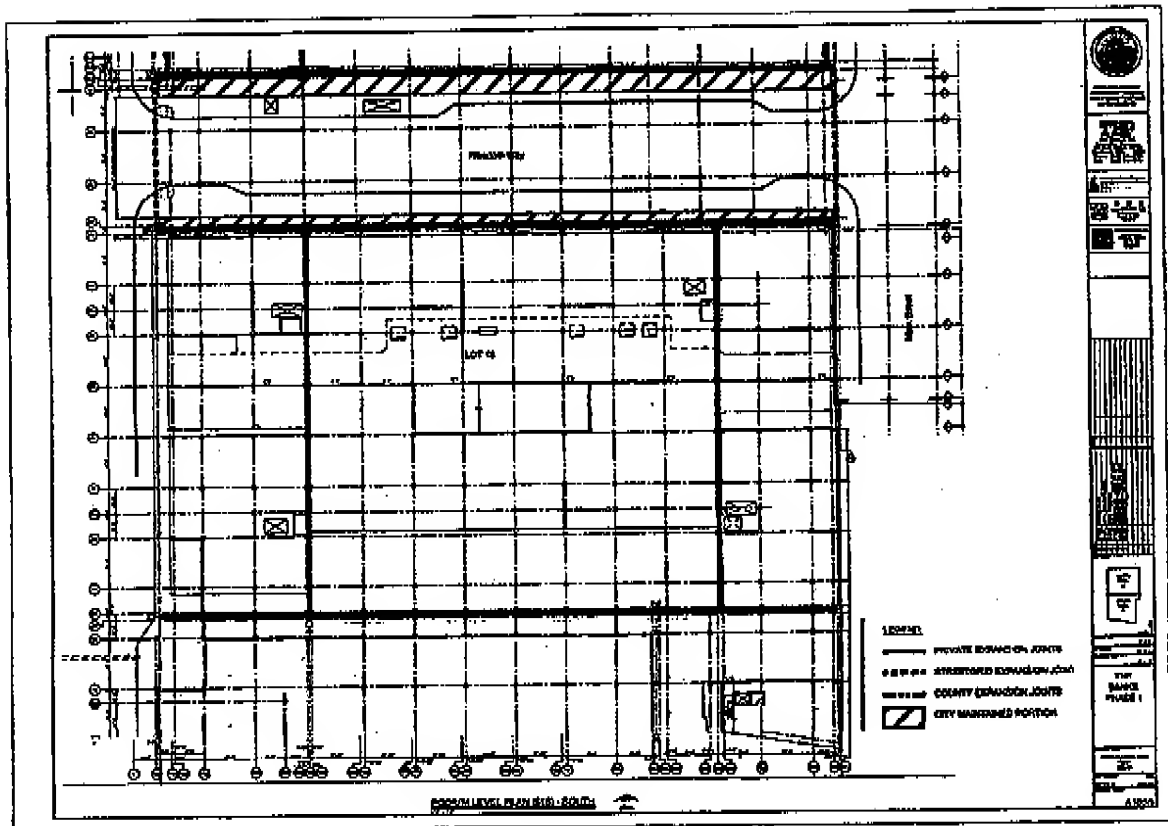
1. Elevators and elevator pits for private elevators shown on Exhibit E-1 and Exhibit E-2 Lot 16 and Lot 26)
2. Stairwell shown on Exhibit E-1 (Lot 16)
3. Access Drive and Ramp shown on Exhibit E-1 (Lot 16)
4. Grease traps shown on Exhibit E-1 and Exhibit E-2 (Lot 16 and Lot 26)
5. Motor rooms shown on Exhibit E-1 and Exhibit E-2 (Lot 16 and Lot 26)

EXHIBIT D-1

Site Plan (denoting Private Expansion Areas in Lot 16 Portion, City-Matched Portion of Lot 16 Dwell and Street Grid Extension Foots in Lot 16 Portion)

EXHIBIT D-2

**Site Plan (depicting Private Expansion Joists in Lot 26 Podium,
City-Maintained Portion of Lot 26 Podium and Street Grid Expansion Joists in Lot 26 Podium)**



Clear Plan of Parking Facility (identifying general location of Dedicated Parking Spaces)

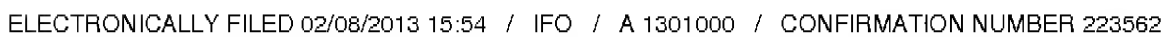


EXHIBIT F-1

Site Plan (denoting Headhouses, Passenger Elevators, Subways,
Ventilation Shafts, Access Drives and Ramps and Grassy Tracts in Lot 16 Podium)

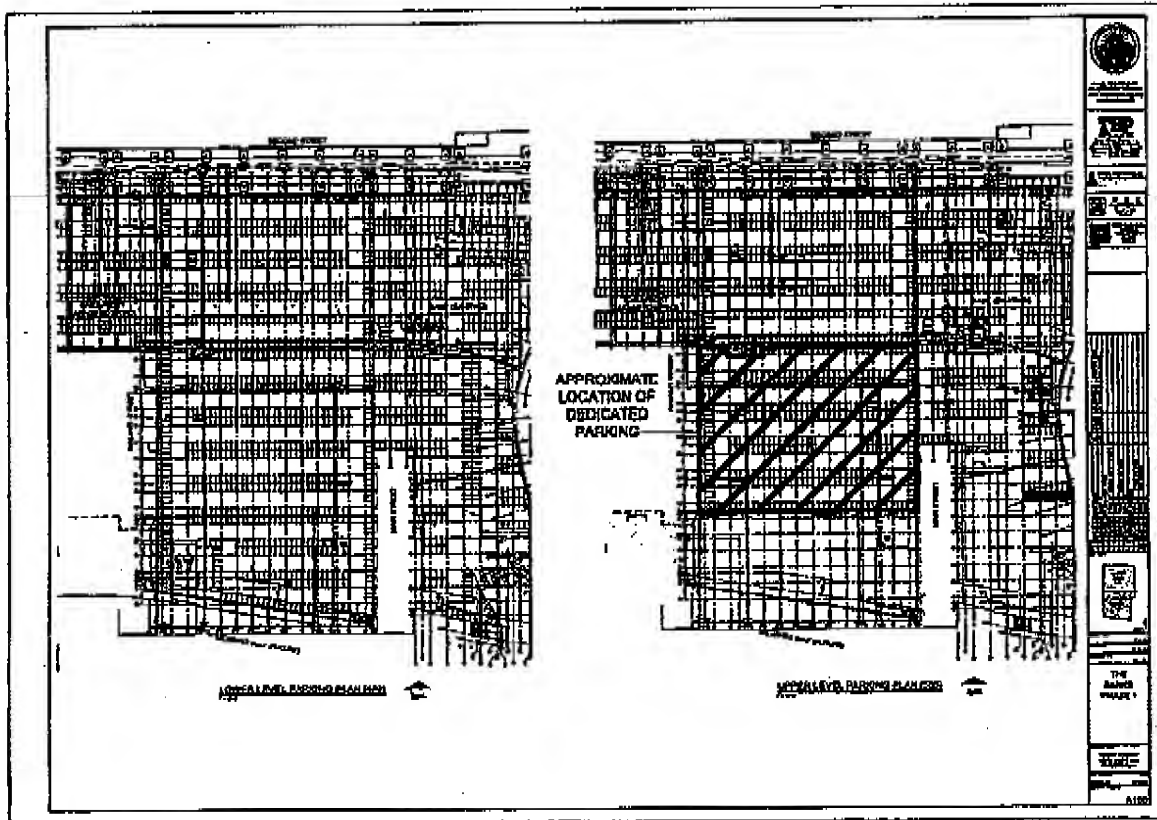


EXHIBIT E-2

Site Plan (depicting Headhouses, Passenger Elevators, Stairwells, Ventilation Shafts, Access Drives and Ramps and Grease Traps in Lot 20 Podium)

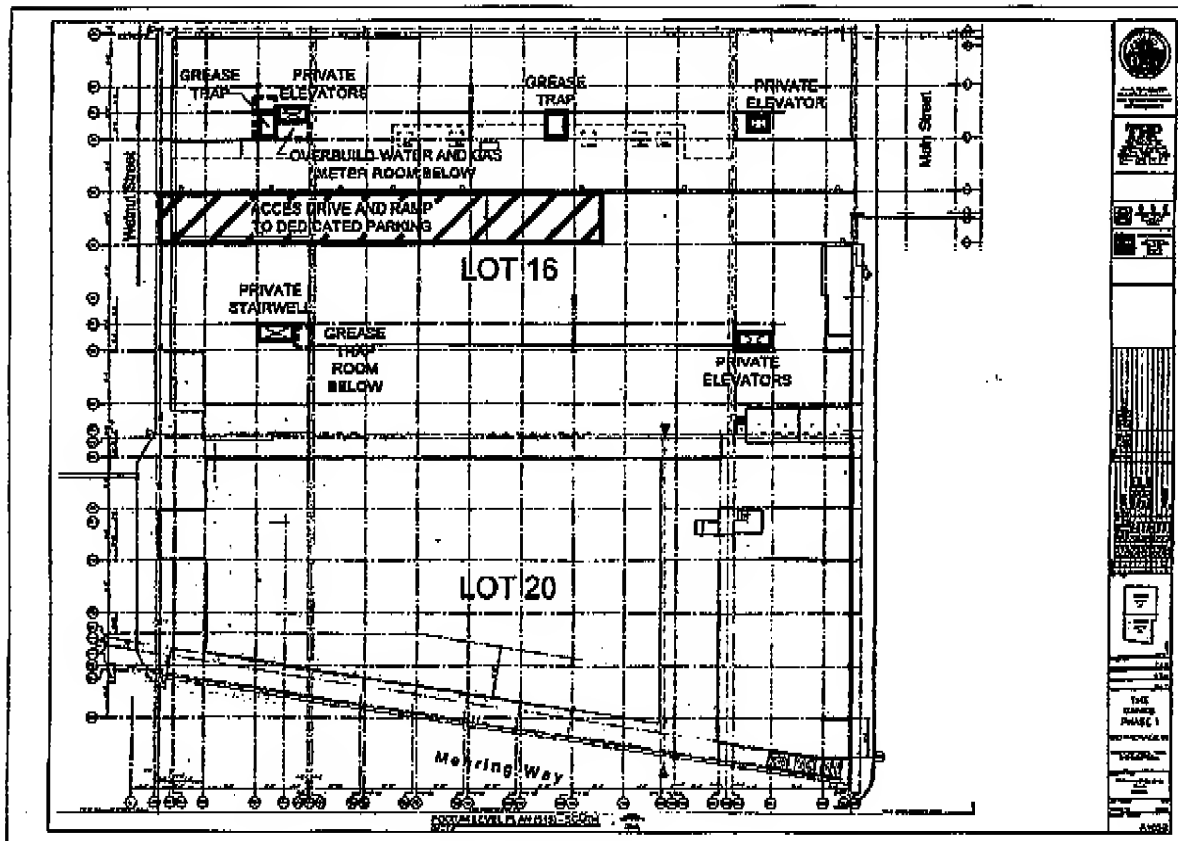


EXHIBIT G

Parking-Related Elements of the Banks Property

1. Public Elevators and Shared Elevators shown on Exhibit F-2 (Lot 26)
2. Stairwell shown on Exhibit F-2 (Lot 26)
3. Ventilation Shafts shown on Exhibit F-2 (Lot 26)
4. Access Drive and Ramp shown on Exhibit F-2 (Lot 26)

- 1.
- 2.
- 3.
- 4.

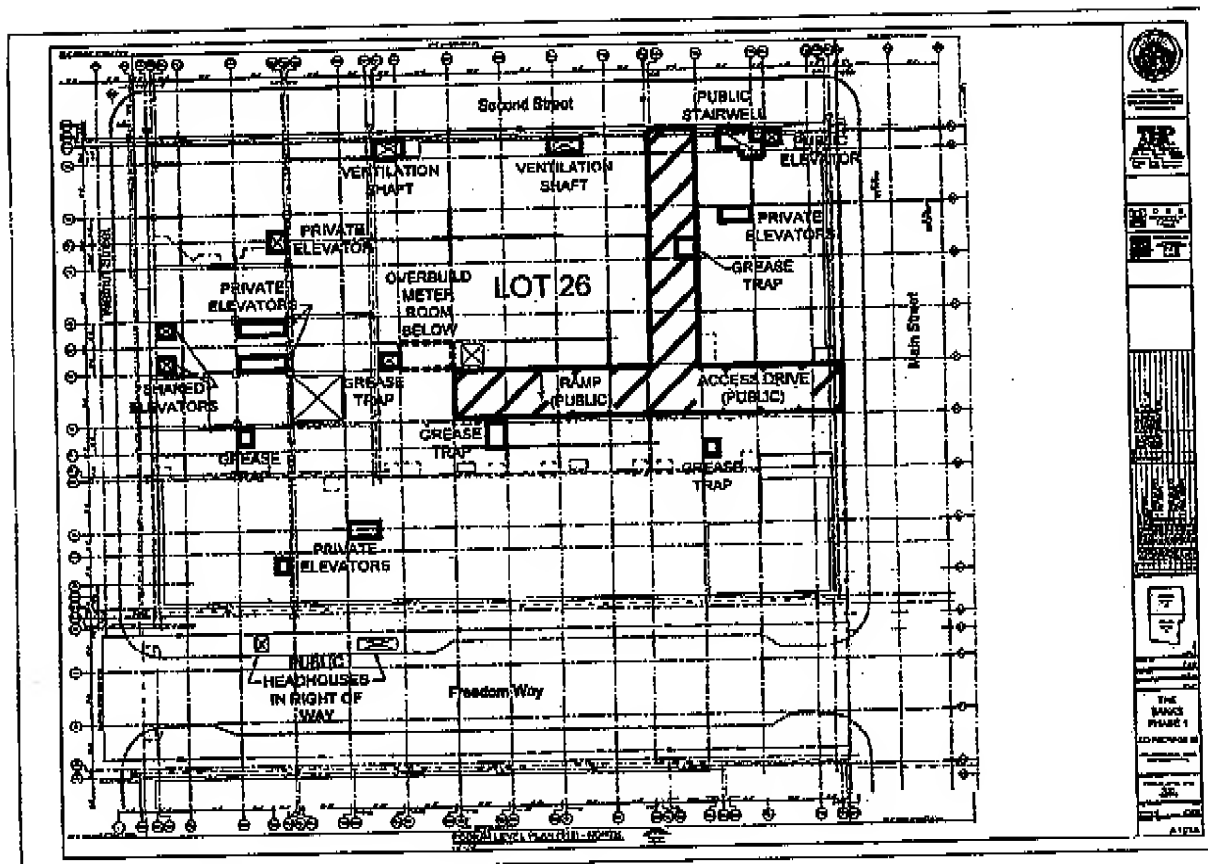


EXHIBIT II

Structural Load Information

The Banks Development Phase 1 - Lot 26 Office Building (updated 7/3/08), Model Criteria, prepared by Utun & Case Engineers, LLC, consisting of six pages, together with sheets labeled Lobby/Podium Level Framing Plan (S1.1), Shear Wall Schedules and Details (S1.1) and Shear Wall Schedules and Details (S1.2).

The Banks Development Phase 1 - Lot 26 Office Building (updated 7/3/08), Structural Wall Output, prepared by Utun & Case Engineers, LLC, consisting of three pages.

The Banks Developmental Phase 1 - Lot 26 Office Building (updated 7/2/08), Structural Column Output, prepared by Utun & Case Engineers, LLC, consisting of five pages.

Email from Tom Pfeiffer of Utun & Case Engineers, LLC to Jan Ye of THP Limited, Inc. dated September 11, 2008, regarding Banks Office Building Revised Loads, with attached revised podium floor plan, column schedule, revised column loads and revised wind load case.

Memorandum dated April 18, 2008 from Steven Schaefer Associates, Inc. to Cole + Russell Architects, Inc. regarding preliminary podium level loads at Lots 16 and 26, consisting of two pages.

Memorandum dated May 30, 2008 from Steven Schaefer Associates, Inc. to Cole + Russell Architects, Inc. regarding preliminary podium level loads at the 2-story retail space for Lot 26, consisting of one page, together with an attached spread sheet of service loads containing four pages.

Email from Dong Steinhilf of Steven Schaefer Associates, Inc. to Cole + Russell Architects, Inc. regarding reactions at Lots 16 and 26, consisting of a spreadsheet containing 34 pages dated 5/12/08.

Email from Tom Pfeiffer of Utun & Case Engineers, LLC regarding Lot 16D Townhomes Site Model Criteria (5 pages) and Column Loads (5 pages) dated 12/18/08.

Email from Tom Pfeiffer of Utun & Case Engineers, LLC regarding Lot 16 Hotel Tower Model Criteria (5 pages), Column Loads (6 pages), and Wall Loads (4 pages) dated 12/23/08.

NOTE: The Structural Load Information as identified above is on file at THP Limited, Inc.

USAM 000011

EXHIBIT I

Parking Pedestal/Podium Design Documents

Sh. No.	Sheet Title	Current Progress Preliminary Date	Issued for Construction	Latest Revision
C001	EXISTING SITE PLAN & GENERAL NOTES	9/9/08	9/23/08	9/23/08
C002	EROSION CONTROL PLAN	1/20/09	9/23/08	9/23/08
D001	DEMOLITION PLAN - NORTH AREA	9/9/08	9/23/08	9/23/08
D002	DEMOLITION PLAN - SOUTH AREA	7/15/08	9/23/08	9/23/08
D003	CINERGY FIELD REFERENCE DRAWING	1/14/09	9/23/08	N/A
D004	CINERGY FIELD REFERENCE DRAWING	1/14/09	9/23/08	N/A
D005	CINERGY FIELD REFERENCE DRAWING	1/14/09	9/23/08	N/A
D006	CINERGY FIELD REFERENCE DRAWING	1/14/09	9/23/08	N/A
G001	BUILDING CODE NOTES	9/9/08	9/23/08	9/23/08
G002	BUILDING CODE COORDINATES	9/9/08	9/23/08	9/23/08
A100	LOWER AND UPPER LEVEL (RHS & S01) PARKING PLAN	9/9/08	9/23/08	9/23/08
A101A	LOWER LEVEL (RHS) PARKING PLAN - NORTH	7/14/08		9/23/08
A101B	LOWER LEVEL (RHS) PARKING PLAN - SOUTH	7/14/08		9/23/08
A102A	UPPER LEVEL (S01) PARKING PLAN - NORTH	9/9/08		9/23/08
A102B	UPPER LEVEL (S01) PARKING PLAN - SOUTH	7/14/08		9/23/08
A103A	PODIUM LEVEL (RHS) PLAN - NORTH	7/14/08		9/23/08
A103B	PODIUM LEVEL (RHS) PLAN - SOUTH	7/14/08		9/23/08
A201	BUILDING SECTIONS - EASTWEST	9/9/08		9/23/08
A202	BUILDING SECTIONS - EASTWEST	9/9/08		9/23/08
A203	BUILDING SECTIONS - NORTH/SOUTH	9/9/08		9/23/08
A204	SECTIONS	7/14/08		9/23/08
A304	BUILDING SECTIONS - EASTWEST	7/14/08		9/23/08
A305	DETAILS	7/14/08		9/23/08
A306	DETAILS	7/14/08		9/23/08
A307	LOT 16 NORTH STAIR/ELEVATOR PLANS	7/14/08		9/23/08
A308	LOT 16 NORTH STAIR/ELEV. SECTIONS & DETAILS	7/14/08		9/23/08
A309	LOT 26 NORTH STAIR/ELEV. SECTIONS & DETAILS	7/14/08		9/23/08
A310	LOT 26 NORTH STAIR - DETAIL	7/14/08		9/23/08
A311	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
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A406	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A407	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A408	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A409	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A410	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A411	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A412	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A413	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A414	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A415	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A416	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A417	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A418	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A419	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A420	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A421	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A422	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A423	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A424	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A425	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A426	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A427	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A428	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A429	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A430	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A431	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A432	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A433	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A434	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A435	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A436	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A437	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A438	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A439	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A440	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A441	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A442	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A443	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A444	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A445	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A446	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A447	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A448	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A449	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A450	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A451	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A452	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A453	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A454	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A455	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A456	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A457	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A458	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A459	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A460	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A461	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A462	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A463	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A464	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A465	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A466	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A467	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A468	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A469	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A470	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A471	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A472	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A473	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A474	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A475	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A476	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08
A477	PEDESTRIAN WALKWAY - PLANS	7/14/08		9/23/08

EXHIBIT J

Street Grid/Midway Design Documents

Plans Prepared by Bergess & Nigle, Inc.

DRAWING NUMBER TITLE BLOCK

DRAWING NUMBER	TITLE BLOCK	DATE
Title Sheet 01/89	Title Sheet	11/07/08
Schematic Plan 02/89	Schematic	11/07/08
General Notes 03/89	General Notes	11/07/08
04/89	General Notes	11/07/08
05/89	General Notes	11/07/08
06/89	General Notes	11/07/08
General Summary 07/89	General Summary	11/07/08
08/89	General Summary	11/07/08
Sub- Summaries 09/89	Roadway Subsummary	11/07/08
10/89	Signal and Pave Marking Subsummary	11/07/08
Existing Site Conditions 11/89	Existing Conditions Upper Level Freedom Way Elm St. to Race St.	11/07/08
12/89	Existing Conditions Lower Level Freedom Way Elm St. to Race St.	11/07/08
13/89	Grade Detail Freedom Way Elm St. to Race St.	11/07/08
Storm Sewer Plan 14/89	Storm Sewer Plan Lower Level Freedom Way Elm St. to Race St.	11/07/08

Signal Layout Plan 15/89	Signal Layout Freedom Way	11/07/08
Traffic Control 16/89	Prevent Markings Freedom Way Prevent Markings Freedom Way Walnut St. to Joe Nashall Way	11/07/08 11/07/08
17/89	Ex. Traffic Signal Plan Freedom Way and Elm St.	11/07/08
18/89	Traffic Signal Plan Freedom Way and Elm St.	11/07/08
19/89	Traffic Signal Detail Freedom Way and Elm St.	11/07/08
20/89	Traffic Signal Plan Freedom Way and Elm St.	11/07/08
21/89	Traffic Signal Plan Freedom Way and Elm St.	11/07/08
22/89	Traffic Signal Plan Detail Freedom Way and Elm St.	11/07/08
23/89	Traffic Signal Plan Detail Freedom Way and Elm St.	11/07/08
24/89	Traffic Signal Plan Freedom Way and Joe Nashall Way	11/07/08
25/89	Traffic Signal Detail Freedom Way and Joe Nashall Way	11/07/08
Lighting 26/89	Lighting Subsummary	11/07/08
27/89	Lighting Controller Details	11/07/08
28/89	Lighting Controller Details	11/07/08
29/89	Light Pole Details	11/07/08
30/89	Lighting Plan Freedom Way Elm St. to Race St.	11/07/08
31/89	Lighting Plan Freedom Way Walnut St. to Joe Nashall Way	11/07/08
32/89	Proposed Electric Freedom Way Walnut St. to Joe Nashall Way	11/07/08
Electrical Layout 33/89	Electric Details	11/07/08
Landscape Plan 34/89	Landscape Plan Freedom Way	11/07/08
35/89	Landscape Plan	11/07/08
Structural Plans 36/89	General Bridge Notes	11/07/08
37/89	Site Plan	11/07/08

2/28	38/89	Estimated Quantities and General Notes	11/07/08
3/28	39/89	Deck Plan	11/07/08
4/28	40/89	Deck Plan	11/07/08
5/28	41/89	Sidewalk Plan	11/07/08
6/28	42/89	Deck Section	11/07/08
7/28	43/89	Cap Beam Details	11/07/08
8/28	44/89	Deck Plan Race & Freedom Way	11/07/08
9/28	45/89	Sidewalk & Deck Overlay Race & Freedom Way	11/07/08
10/28	46/89	Sidewalk Plan Race & Freedom Way	11/07/08
11/28	47/89	Top of Deck Elevation	11/07/08
12/28	48/89	Structural Slab Elevations	11/07/08
13/28	49/89	Routing Details	11/07/08
14/28	50/89	Tree Pit Details	11/07/08
15/28	51/89	Pole Anchor Details	11/07/08
16/28	52/89	Existing Elm Street Retrofit Plan	11/07/08
17/28	53/89	Existing Elm Street Steel Pole Retrofit	11/07/08
18/28	54/89	Expansion Joint Plan	11/07/08
19/28	55/89	Expansion Joint Plan Details 2	11/07/08
20/28	56/89	Expansion Joint Plan Details 3	11/07/08
21/28	57/89	Expansion Joint Plan Details 4	11/07/08
22/28	58/89	Expansion Joint Plan Details 5	11/07/08
23/28	59/89	Expansion Joint Plan Details 6	11/07/08
24/28	60/89	Expansion Joint Plan Details 7	11/07/08
25/28	61/89	Expansion Joint Plan Details 8	11/07/08
26/28	62/89	Storm Plan and Details	11/07/08
27/28	63/89	Reinforcing Steel List 1	11/07/08
28/28	64/89	Reinforcing Steel List 2	11/07/08
1/25	65/89	Site Plan	11/07/08
2/25	66/89	Estimated Quantities and General Notes	11/07/08
3/25	67/89	Deck Plan	11/07/08
4/25	68/89	Deck Reinforcing 1	11/07/08
5/25	69/89	Deck Reinforcing 2	11/07/08
6/25	70/89	Sidewalk & Deck Overlay Reinforcing 1	11/07/08
7/25	71/89	Sidewalk & Deck Overlay Reinforcing 2	11/07/08
8/25	72/89	Typical Sections	11/07/08
9/25	73/89	Cap Beam Details	11/07/08
10/25	74/89	Top of Deck Elevation	11/07/08
11/25	75/89	Structural Slab Elevations	11/07/08
12/25	76/89	Tree Pit Details	11/07/08
13/25	77/89	Pole Anchor Details	11/07/08
14/25	78/89	Expansion Joint Layout	11/07/08
15/25	79/89	Expansion Joint Detail 1	11/07/08
16/25	80/89	Expansion Joint Detail 2	11/07/08

17/25	81/89	Expansion Joint Detail 3	11/07/08
18/25	82/89	Expansion Joint Detail 4	11/07/08
19/25	83/89	Expansion Joint Detail 5	11/07/08
20/25	84/89	Expansion Joint Detail 6	11/07/08
21/25	85/89	Expansion Joint Detail 7	11/07/08
22/25	86/89	Storm Plan & Details	11/07/08
23/25	87/89	Storm Details	11/07/08
24/25	88/89	Reinforcing Steel List 1	11/07/08
25/25	89/89	Reinforcing Steel List 2	11/07/08

The Parties hereby acknowledge and agree that the certain of the foregoing Design Documents shall be refined and further detailed with respect to the following elements, which shall be subject to each Party's review and approval as provided in Article 2:

1. Waterproofing Terminations and Expansion Joint Details between the rights of way and face of buildings along the Private Expansion Joints at the surface level of the Podiums.
2. Secondary Electrical Service Installation details.
3. Transformer location details.

As set forth in Sections 2.2.3, 2.3.4 and 2.4.3, any such additional detailing and refinement of the foregoing Design Documents shall be consistent with the guidelines set forth in Sections 2.2.2 - 2.2.4, Sections 2.3.3 - 2.3.5 and/or Sections 2.4.2 - 2.4.4, as applicable.

EXHIBIT K-1

CERTIFICATE OF COMPLETION
(Parking Facility)

This Certificate of Completion is executed and delivered as of the ____ day of _____, 20____, by Riverbanks Renaissance Phase 1-A Owner, LLC, a Delaware limited liability company ("Phase 1A Developer"), Riverbanks Renaissance Phase 1-B Owner, LLC, a Delaware limited liability company ("Phase 1B Developer"), and The City of Cincinnati, Ohio, an Ohio municipal corporation (the "City"), to and for the benefit of The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County").

Phase 1A Developer, Phase 1B Developer, the County and the City are parties to a Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration"), dated _____, 2009, of record in Official Record Book ____ Page ____, Recorder's Office, Hamilton County, Ohio. The Specific Declaration encumbers Lots 16A, 16B, 26A and 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

Phase 1A Developer, Phase 1B Developer and the City hereby certify that the Parking Facility (as defined in the Specific Declaration) has been designed and constructed in accordance with the Specific Declaration and that the Parking Facility is Complete (as defined in the Specific Declaration); provided that Phase 1A Developer and Phase 1B Developer do not hereby waive any rights they may have with respect to any Parking Facility Construction Defect (as defined in the Specific Declaration) under Section 2.6.3 of the Specific Declaration.

Phase 1A Developer, Phase 1B Developer and the City have executed this Certificate of Completion as of the date first set forth above.

(EXECUTION WITH NOTARIZED ACKNOWLEDGMENTS BY
PHASE 1A DEVELOPER, PHASE 1B DEVELOPER AND CITY)

This instrument was prepared by: [NAME AND ADDRESS OF PREPARER]

EXHIBIT K-2

CERTIFICATE OF COMPLETION
(Podium)

This Certificate of Completion is executed and delivered as of the ____ day of _____, 20____, by Riverbanks Renaissance Phase 1-A Owner, LLC, a Delaware limited liability company ("Phase 1A Developer"), Riverbanks Renaissance Phase 1-B Owner, LLC, a Delaware limited liability company ("Phase 1B Developer"), and The City of Cincinnati, Ohio, an Ohio municipal corporation (the "City"), to and for the benefit of The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County").

Phase 1A Developer, Phase 1B Developer, the County and the City are parties to a Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration"), dated _____, 2009, of record in Official Record Book ____ Page ____, Recorder's Office, Hamilton County, Ohio. The Specific Declaration encumbers Lots 16A, 16B, 26A and 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

Phase 1A Developer, Phase 1B Developer and the City hereby certify that the [Lot 16/Lot 26] Podium (as defined in the Specific Declaration) has been designed and constructed in accordance with the Specific Declaration and that the [Lot 16/Lot 26] Podium is Complete (as defined in the Specific Declaration). Further, Phase 1A Developer and Phase 1B Developer hereby except the [Lot 16/Lot 26] Podium as contemplated by Section 2.7.4 of the Specific Declaration.

Phase 1A Developer, Phase 1B Developer and the City have executed this Certificate of Completion as of the date first set forth above.

(EXECUTION WITH NOTARIZED ACKNOWLEDGMENTS BY
PHASE 1A DEVELOPER, PHASE 1B DEVELOPER AND CITY)

This instrument was prepared by: [NAME AND ADDRESS OF PREPARER]

EXHIBIT K-3

CERTIFICATE OF COMPLETION
(Phase 1A Improvements)

This Certificate of Completion is executed and delivered as of the ____ day of _____, 20____, by The City of Cincinnati, Ohio, an Ohio municipal corporation (the "City"), and The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), to and for the benefit of Riverbanks Renaissance Phase 1-A Owner, LLC, a Delaware limited liability company ("Phase 1A Developer").

Phase 1A Developer, Riverbanks Renaissance Phase 1-A Owner, LLC, a Delaware limited liability company, the County and the City are parties to a Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration"), dated _____, 2009, of record in Official Record Book ____ Page ____ Recorder's Office, Hamilton County, Ohio. The Specific Declaration encumbers Lots 16A, 16B, 26A and 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

The City and the County hereby certify that the Phase 1A Improvements (as defined in the Specific Declaration) have been designed and constructed in accordance with the Specific Declaration and that the Phase 1A Improvements are Complete (as defined in the Specific Declaration); provided that the City and the County do not hereby waive any rights they may have with respect to any Banks Construction Defect (as defined in the Specific Declaration) as to the Phase 1A Improvements under Section 2.9.3 of the Specific Declaration.

The City and the County have executed this Certificate of Completion as of the date first set forth above.

[EXECUTION WITH NOTARIZED ACKNOWLEDGMENTS BY
CITY AND COUNTY]

This instrument was prepared by: [NAME AND ADDRESS OF PREPARER]

EXHIBIT K-4

CERTIFICATE OF COMPLETION
(Phase 1B Improvements)

This Certificate of Completion is executed and delivered as of the ____ day of _____, 20____, by The City of Cincinnati, Ohio, an Ohio municipal corporation (the "City"), and The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), to and for the benefit of Riverbanks Renaissance Phase 1-B Owner, LLC, a Delaware limited liability company ("Phase 1B Developer").

Phase 1B Developer, Riverbanks Renaissance Phase 1-A Owner, LLC, a Delaware limited liability company, the County and the City are parties to a Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration"), dated _____, 2009, of record in Official Record Book ____ Page ____ Recorder's Office, Hamilton County, Ohio. The Specific Declaration encumbers Lots 16A, 16B, 26A and 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

The City and the County hereby certify that the Phase 1B Improvements (as defined in the Specific Declaration) have been designed and constructed in accordance with the Specific Declaration and that the Phase 1B Improvements are Complete (as defined in the Specific Declaration); provided that the City and the County do not hereby waive any rights they may have with respect to any Banks Construction Defect (as defined in the Specific Declaration) as to the Phase 1B Improvements under Section 2.9.3 of the Specific Declaration.

The City and the County have executed this Certificate of Completion as of the date first set forth above.

[EXECUTION WITH NOTARIZED ACKNOWLEDGMENTS BY
CITY AND COUNTY]

This instrument was prepared by: [NAME AND ADDRESS OF PREPARER]

EXHIBIT M

RELEASE FROM OBLIGATION TO PAY DEFERRED PURCHASE PRICE

This Release from Obligation to Pay Deferred Purchase Price (this "Release") is executed and delivered as of the 20 day of 20, by The City of Cincinnati, Ohio, an Ohio municipal corporation (the "City"), and The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County").

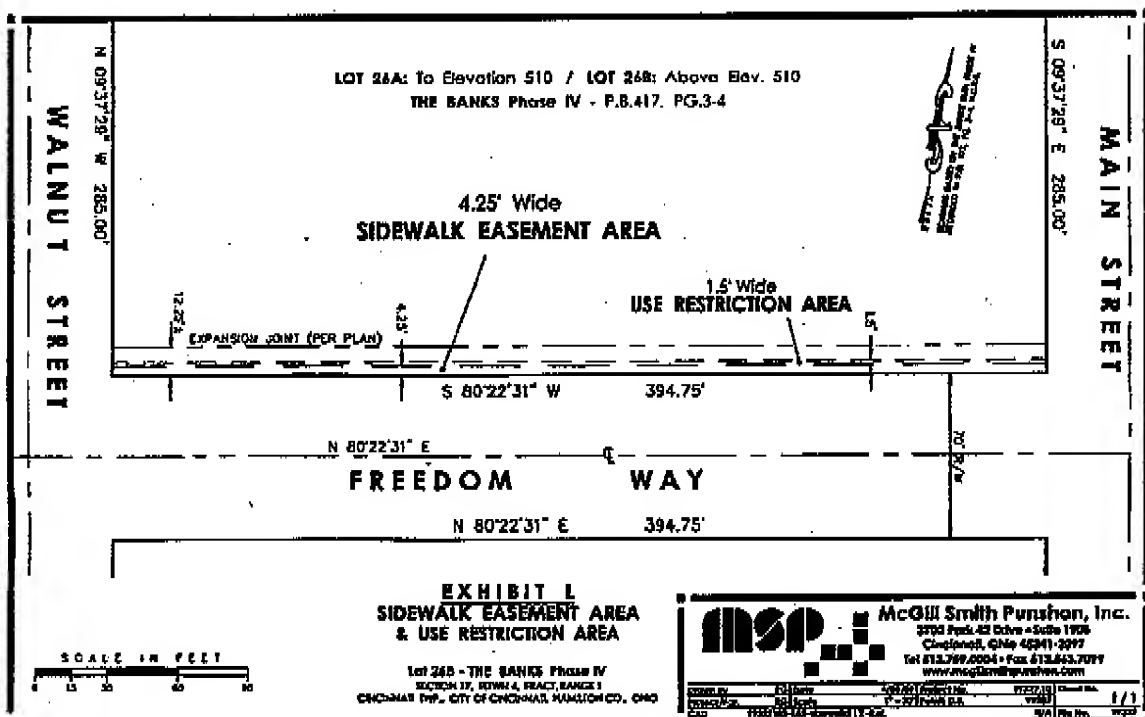
Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Phase I-A Developer"), Riverbanks Renaissance Phase I-B Owner, LLC, a Delaware limited company ("Phase I-B Developer"), the County and the City entered into a Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration"), dated 2009, of record in Official Record Book 16A, 16B, 26A and 26B of Hamilton County, Ohio. The Specific Declaration encumbers Lots 16A, 16B, 26A and 26B of The Banks Phase IV, as numbered and delineated on the recorded plat thereof, of record in Plat Book 417, Pages 3-4, Recorder's Office, Hamilton County, Ohio.

Pursuant to the Specific Declaration, [OWNERSHIP ENTITY] is obligated to pay the Deferred Purchase Price (as defined in the Specific Declaration) for [DEVELOPMENT ASSET]. The City and the County hereby certify that a Deferred Purchase Price Termination Event (as defined in Section 3.2.4 of the Specific Declaration) has occurred with respect to [DEVELOPMENT ASSET] and that the Deferred Purchase Price, if any, for [DEVELOPMENT ASSET] has been paid, and hereby release [DEVELOPMENT ASSET] from the obligation to pay the Deferred Purchase Price. This Release shall not operate to release [DEVELOPMENT ASSET] from any obligation under the Specific Declaration other than the obligation to pay the Deferred Purchase Price, or to release any Development Asset (as defined in the Specific Declaration) other than [DEVELOPMENT ASSET] from any obligation under the Specific Declaration, including but not limited to the obligation to pay the Deferred Purchase Price.

The City and the County have executed this Release as of the date first set forth above.

EXECUTION WITH NOTARIZED ACKNOWLEDGMENTS BY
CITY AND COUNTY

This instrument was prepared by: [NAME AND ADDRESS OF PREPARER]



THE BANKS

MASTER PLAN

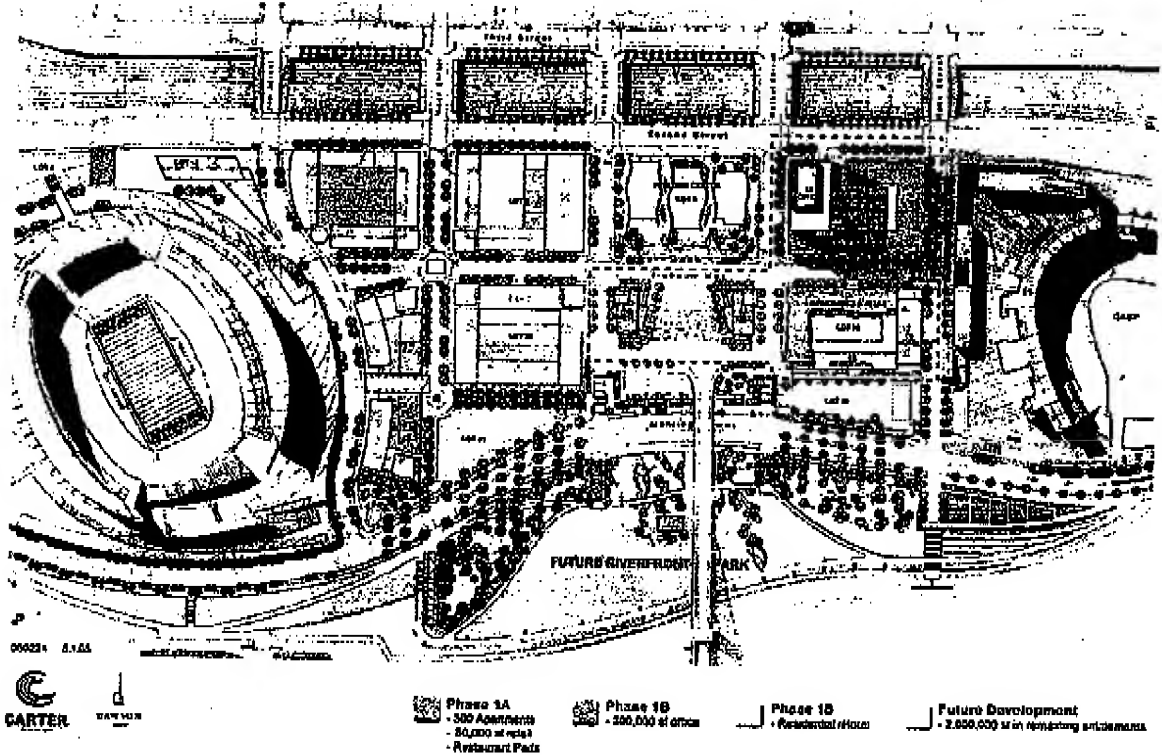


EXHIBIT N
Master Development Plan Revision

Exhibit O-1

Form of Notice Requesting Approval of
Street Grid/Utility Design Documents

[CITY LETTERHEAD]

THIS LETTER SERVES AS FORMAL WRITTEN NOTICE THAT THE REFERENCED STREET GRID/UTILITY DESIGN DOCUMENTS ARE BEING SUBMITTED TO THE PHASE 1A DEVELOPER, THE PHASE 1B DEVELOPER AND THE COUNTY FOR APPROVAL UNDER SECTION 2.4.4 OF THE SPECIFIC DECLARATION

VIA OVERNIGHT DELIVERY

[Date]

[Phase 1A Developer Notice Addresses]

[Phase 1A Developer Notice Addresses]

[County Notice Addresses]

RE: Request for approval of Street Grid/Utility Design Documents under Section 2.4.4 of that certain Specific Declaration dated as of September __, 2009, recorded in Official Record Book __, Page __, Recorder's Office, Hamilton County, Ohio (the "Specific Declaration").

Ladies and Gentlemen:

Pursuant to Section 2.4.4 of the Specific Declaration, the Street Grid/Utility Design Documents that are enclosed or referenced in the enclosed identification of Street Grid/Utility Design Documents which have been previously delivered are being submitted for approval in accordance with the terms of the Specific Declaration. You have ten business days after receipt of this submittal to provide written notice of your approval or disapproval of such Street Grid/Utility Design Documents in accordance with Section 2.4.4 of the Specific Declaration.

Please feel free to contact the undersigned with any questions.

Sincerely,

[City Representative]

Exhibit O-2

Form of Notice Requesting Comments on
Banks Design Documents

[PHASE 1A/PHASE 1B DEVELOPER LETTERHEAD]

THIS LETTER SERVES AS FORMAL WRITTEN NOTICE THAT THE REFERENCED BANKS DESIGN DOCUMENTS ARE BEING SUBMITTED TO THE COUNTY AND THE CITY FOR COMMENT UNDER SECTION 2.5.3 OF THE SPECIFIC DECLARATION

VIA OVERNIGHT DELIVERY

[Date]

[County Notice Addresses]

[City Notice Addresses]

RE: Request for comment on Banks Design Documents under Section 2.5.3 of that certain Specific Declaration dated as of September __, 2009, recorded in Official Record Book __, Page __, Recorder's Office, Hamilton County, Ohio (the "Specific Declaration").

Ladies and Gentlemen:

Pursuant to Section 2.5.3 of the Specific Declaration, the Banks Design Documents that are enclosed or referenced in the enclosed identification of Banks Design Documents which have been previously delivered are being submitted for comment in accordance with the terms of the Specific Declaration. You have ten business days after receipt of this submittal to provide written comments or notice of no comments on such Banks Design Documents in accordance with Section 2.5.3 of the Specific Declaration.

Please feel free to contact the undersigned with any questions.

Sincerely,

[Phase 1A/Phase 1B Developer Representative]

STATE OF ARIZONA
COUNTY OF MARICOPA

GUARANTY (CORPORATE)

KNOW ALL MEN BY THESE PRESENTS:

In consideration of the letting by Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Landlord") to CRGE Cincinnati, LLC, an Arizona limited liability company ("Tenant") pursuant to a Retail Lease Agreement dated December 14, 2010 (the "Lease") of premises described therein, the delivery of which lease is conditioned upon the execution and delivery of this Guaranty, and the payment of One Dollar (\$1.00) to the undersigned by Landlord, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned Capri Concepts, LLC, an Arizona limited liability company (hereinafter collectively called the "Guarantor") does hereby unconditionally guarantee the full, prompt and complete payment and performance by Tenant of all of the terms, covenants, conditions and agreements contained in the Lease on the part of Tenant to be performed, including specifically, without limitation, the obligation to pay all rents and any other charges or obligations therein set forth and the obligations regarding "Hazardous Material" defined in the Lease, together with any and all renewal or renewals, extension or extensions, modifications or modifications thereof, and substitution or substitutions therefor (all such obligations collectively, the "Obligations"). This is a guaranty of payment and performance and not merely of collection.

Guarantor waives presentment, demand, dishonor, notice of dishonor, protest, and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of the existence or creation of the Obligations, and of all defaults, disputes or controversies with Tenant, and of the settlement, compromise or adjustment thereof. Guarantor agrees that Landlord shall have full authority, without obtaining the consent of, giving notice to, or affecting the liability of Guarantor, to make changes of terms, to extend time to pay, to release the whole or any part of the Obligations, to settle or compound differences for less than the full amount owing under the Lease, to accept notes, trade acceptances or any other form of obligation for the Obligations, to make arrangements or settlements in or out of court in the case of receivership, liquidation, readjustment, bankruptcy, reorganization, arrangement or an assignment for the benefit of creditors and to do anything, whether or not herein specified, which may be done or waived by or between Landlord and Tenant. The making of such arrangements, settlements, compromises, adjustments, extensions of time and so forth shall not diminish, discharge, modify, reduce, extinguish or otherwise affect the liability of Guarantor hereunder for the full amount owing under the Lease. Guarantor further agrees that no act or omission on the part of Landlord shall in any way affect, impede or impair this guaranty. Guarantor waives any rights of subrogation, reimbursement, exoneration, contribution or indemnity and any rights or claims of any nature or kind against Tenant which arise out of or are caused by this Guaranty and any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security (including any security deposit) now or hereafter held by Landlord.

This guaranty shall be enforceable without Landlord having (i) to proceed first against Tenant (any right to require Landlord to take action against Tenant being hereby expressly waived) or against any security for any payments due under the Lease, or (ii) to exercise any of Landlord's remedies under the Lease; and this guaranty shall be effective regardless of the solvency or insolvency of Tenant, any reorganization, merger or consolidation of Tenant, any change in the composition, nature, personnel or location of Tenant, or any bankruptcy, receivership, liquidation, reorganization or other proceeding involving Tenant.

This guaranty shall be binding upon and enforceable against each person and entity executing this guaranty and upon the respective heirs, legal representatives, successors and assigns of each such person and entity. The liability of each person and entity executing this guaranty and the heirs, legal representatives, successors and assigns of each such entity and person hereunder is joint and several,

Exhibit B

primary and unconditional, and shall not be subject to any claim of offset, counterclaim or defense of Tenant.

This guaranty shall be continuing, irrevocable, absolute and unconditional and shall remain in full force and effect as to Guarantor until such time as all of the Obligations shall have been paid or satisfied in full; provided however, that if no Event of Default (as defined in the Lease) has occurred, and if no condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default, this Guaranty, and Guarantor's obligations hereunder, will automatically expire upon the expiration of the third (3rd) full calendar year following the day that Tenant has completed all of Tenant's Work and lawfully opened the Premises for business to the public. No delay or failure on the part of Landlord in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Landlord of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Guarantor agrees that this guaranty shall not be affected by reason of assertion by Landlord against Tenant of any rights or remedies reserved to Landlord in the Lease, or by reason of any summary or other proceedings against Tenant, or by the amendment or modification of the Lease with or without notice to, or consent of, the Guarantor.

This guaranty shall remain in full force and effect, and Guarantor shall continue to be liable for the payment of all amounts owing under the Lease, in accordance with the original terms of the documents and instruments evidencing the same, notwithstanding the commencement of any bankruptcy, reorganization or other debtor relief proceeding by or against Tenant, and notwithstanding any modification, discharge or extension of the Obligations, any modification or amendment of any document or instrument evidencing any of the Obligations, any stay of the exercise by Landlord of any of its rights and remedies against Tenant with respect to any of the Obligations, or any cure of any default by Tenant under any document or instrument evidencing any of the Obligations, which may be effected in connection with any such proceeding, whether permanent or temporary, and notwithstanding any assent thereto by Landlord.

Landlord may, without notice of any kind, sell, assign or transfer the Lease, and in such event each and every immediate and successive assignee, transferee or holder of the Lease shall have the right to enforce this guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such person were herein by name specifically given such rights, powers and benefits, but Landlord shall have an unimpaired right to enforce this guaranty for its benefit as to so much of the Obligations as Landlord has not sold, assigned, or transferred.

This guaranty has been made and delivered in the State of Ohio and shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Ohio. Wherever possible, each provision of this guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guaranty shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this guaranty.

Guarantor hereby submits to personal jurisdiction in the State of Ohio for the enforcement of this guaranty and waives any and all personal rights under the laws of the State of Ohio or the United States to object to jurisdiction within the State of Ohio for the purposes of litigation to enforce this guaranty. In the event that such litigation is commenced, Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by the serving of a copy of the summons and complaint upon Guarantor at the following address:

Capri Concepts, LLC
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Nothing contained herein shall prevent Landlord from bringing any action or exercising any rights against any security given to Landlord by Tenant or Guarantor, or against Guarantor personally, or against any property of Guarantor, within any other state. Commencement of any such action or proceeding in any

other state shall not constitute a waiver of the agreement that the laws of the State of Ohio shall govern the rights and obligations of Guarantor and Landlord hereunder or of the submission made by Guarantor to personal jurisdiction within the State of Ohio. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Ohio.

Guarantor warrants and represents to Landlord that any financial statements heretofore delivered by Guarantor to Landlord were true and correct in all respects as of the date delivered to Landlord. At any time this Guaranty is in effect, Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

Guarantor agrees that Guarantor shall have no right to recover against Tenant by way of subrogation to the rights of Landlord on account of any payment by Guarantor to Landlord hereunder until all of the Obligations have been paid and satisfied in full, and Guarantor hereby waives, releases and relinquishes any such rights of subrogation to such extent.

If Guarantor is a corporation, Guarantor and the persons executing this guaranty as officers of the Guarantor represent that Guarantor has full corporate authority to execute this guaranty and that the officers executing this guaranty are duly authorized to execute this guaranty on behalf of the corporation, and that there is no provision in its charter or bylaws that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor. Guarantor further represents that there is no provision of any other agreement by which Guarantor is bound that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor.

14th IN WITNESS WHEREOF, Guarantor has executed, sealed and delivered this Guaranty, all this day of December, 2010.

CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY:

**Signed, sealed and delivered in the presence of:

CRGE CINCINNATI, LLC, an Arizona limited liability company

Unofficial Witness

By: _____ (Seal)

Name: FRANK CAPPI
Title: MANAGER

Notary Public

(CORPORATE SEAL)

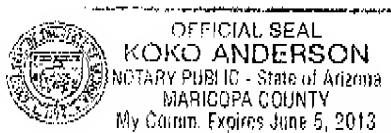
My Commission Expires:

June 5th 2010

Address: 7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

(NOTARIAL SEAL)

**SIGNATURE IS TO BE WITNESSED BY AN INDIVIDUAL (AS UNOFFICIAL WITNESS) AND BY A NOTARY PUBLIC WHO SHOULD AFFIX HIS OR HER NOTARIAL SEAL AND INDICATE THE EXPIRATION DATE OF HIS OR HER COMMISSION BELOW THE SIGNATURE LINE.



STATE OF ARIZONA
COUNTY OF MARICOPA

GUARANTY (INDIVIDUAL)

KNOW ALL MEN BY THESE PRESENTS:

In consideration of the letting by Riverbanks Renaissance Phase I-A Owner, LLC, a Delaware limited liability company ("Landlord") to CRGE Cincinnati, LLC, an Arizona limited liability company ("Tenant") pursuant to a Retail Lease Agreement dated December 14, 2010 (the "Lease") of premises described therein, the delivery of which lease is conditioned upon the execution and delivery of this Guaranty, and the payment of One Dollar (\$1.00) to the undersigned by Landlord, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned Frank Capri (hereinafter collectively called the "Guarantor") does hereby unconditionally guarantee the full, prompt and complete payment and performance by Tenant of all of the terms, covenants, conditions and agreements contained in the Lease on the part of Tenant to be performed, including specifically, without limitation, the obligation to pay all rents and any other charges or obligations therein set forth and the obligations regarding "Hazardous Material" defined in the Lease, together with any and all renewal or renewals, extension or extensions, modifications or modifications thereof, and substitution or substitutions therefor (all such obligations collectively, the "Obligations"). This is a guaranty of payment and performance and not merely of collection.

Guarantor waives presentment, demand, dishonor, notice of dishonor, protest, and all other notices whatsoever, including, without limitation, notices of acceptance hereof, of the existence or creation of the Obligations, and of all defaults, disputes or controversies with Tenant, and of the settlement, compromise or adjustment thereof. Guarantor agrees that Landlord shall have full authority, without obtaining the consent of, giving notice to, or affecting the liability of Guarantor, to make changes of terms, to extend time to pay, to release the whole or any part of the Obligations, to settle or compound differences for less than the full amount owing under the Lease, to accept notes, trade acceptances or any other form of obligation for the Obligations, to make arrangements or settlements in or out of court in the case of receivership, liquidation, readjustment, bankruptcy, reorganization, arrangement or an assignment for the benefit of creditors and to do anything, whether or not herein specified, which may be done or waived by or between Landlord and Tenant. The making of such arrangements, settlements, compromises, adjustments, extensions of time and so forth shall not diminish, discharge, modify, reduce, extinguish or otherwise affect the liability of Guarantor hereunder for the full amount owing under the Lease. Guarantor further agrees that no act or omission on the part of Landlord shall in any way affect, impede or impair this guaranty. Guarantor waives any rights of subrogation, reimbursement, exoneration, contribution or indemnity and any rights or claims of any nature or kind against Tenant which arise out of or are caused by this Guaranty and any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security (including any security deposit) now or hereafter held by Landlord.

This guaranty shall be enforceable without Landlord having (i) to proceed first against Tenant (any right to require Landlord to take action against Tenant being hereby expressly waived) or against any security for any payments due under the Lease, or (ii) to exercise any of Landlord's remedies under the Lease; and this guaranty shall be effective regardless of the solvency or insolvency of Tenant, any reorganization, merger or consolidation of Tenant, any change in the composition, nature, personnel or location of Tenant, or any bankruptcy, receivership, liquidation, reorganization or other proceeding involving Tenant.

This guaranty shall be binding upon and enforceable against each person and entity executing this guaranty and upon the respective heirs, legal representatives, successors and assigns of each such person and entity. The liability of each person and entity executing this guaranty and the heirs, legal representatives, successors and assigns of each such entity and person hereunder is joint and several,

Exhibit C

primary and unconditional, and shall not be subject to any claim of offset, counterclaim or defense of Tenant.

This guaranty shall be continuing, irrevocable, absolute and unconditional and shall remain in full force and effect as to Guarantor until such time as all of the Obligations shall have been paid or satisfied in full; provided however, that if no Event of Default (as defined in the Lease) has occurred, and provided that no condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default, this Guaranty, and Guarantor's obligations hereunder, will automatically expire upon the day that Tenant has completed all of Tenant's Work and has lawfully opened the Premises for business to the public. No delay or failure on the part of Landlord in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Landlord of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Guarantor agrees that this guaranty shall not be affected by reason of assertion by Landlord against Tenant of any rights or remedies reserved to Landlord in the Lease, or by reason of any summary or other proceedings against Tenant, or by the amendment or modification of the Lease with or without notice to, or consent of, the Guarantor.

This guaranty shall remain in full force and effect, and Guarantor shall continue to be liable for the payment of all amounts owing under the Lease, in accordance with the original terms of the documents and instruments evidencing the same, notwithstanding the commencement of any bankruptcy, reorganization or other debtor relief proceeding by or against Tenant, and notwithstanding any modification, discharge or extension of the Obligations, any modification or amendment of any document or instrument evidencing any of the Obligations, any stay of the exercise by Landlord of any of its rights and remedies against Tenant with respect to any of the Obligations, or any cure of any default by Tenant under any document or instrument evidencing any of the Obligations, which may be effected in connection with any such proceeding, whether permanent or temporary, and notwithstanding any assent thereto by Landlord.

Landlord may, without notice of any kind, sell, assign or transfer the Lease, and in such event each and every immediate and successive assignee, transferee or holder of the Lease shall have the right to enforce this guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such person were herein by name specifically given such rights, powers and benefits, but Landlord shall have an unimpaired right to enforce this guaranty for its benefit as to so much of the Obligations as Landlord has not sold, assigned, or transferred.

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Guarantor hereby submits to personal jurisdiction in the State of Ohio for the enforcement of this guaranty and waives any and all personal rights under the laws of the State of Ohio or the United States to object to jurisdiction within the State of Ohio for the purposes of litigation to enforce this guaranty. In the event that such litigation is commenced, Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by the serving of a copy of the summons and complaint upon Guarantor at the following address:

Frank Capri
7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251

Nothing contained herein shall prevent Landlord from bringing any action or exercising any rights against any security given to Landlord by Tenant or Guarantor, or against Guarantor personally, or against any property of Guarantor, within any other state. Commencement of any such action or proceeding in any

other state shall not constitute a waiver of the agreement that the laws of the State of Ohio shall govern the rights and obligations of Guarantor and Landlord hereunder or of the submission made by Guarantor to personal jurisdiction within the State of Ohio. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Ohio.

Guarantor warrants and represents to Landlord that any financial statements heretofore delivered by Guarantor to Landlord were true and correct in all respects as of the date delivered to Landlord. At any time this Guaranty is in effect, Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

Guarantor agrees that Guarantor shall have no right to recover against Tenant by way of subrogation to the rights of Landlord on account of any payment by Guarantor to Landlord hereunder until all of the Obligations have been paid and satisfied in full, and Guarantor hereby waives, releases and relinquishes any such rights of subrogation to such extent.

If Guarantor is a corporation, Guarantor and the persons executing this guaranty as officers of the Guarantor represent that Guarantor has full corporate authority to execute this guaranty and that the officers executing this guaranty are duly authorized to execute this guaranty on behalf of the corporation, and that there is no provision in its charter or bylaws that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor. Guarantor further represents that there is no provision of any other agreement by which Guarantor is bound that in any way conflicts with or prevents the execution, delivery or performance of this guaranty by Guarantor.

IN WITNESS WHEREOF, Guarantor has executed, sealed and delivered this Guaranty, all this 14th day of December, 2010.

INDIVIDUAL:

**Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

Notary Public

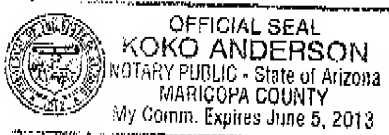
My Commission Expires:

June 5th 2013

(NOTARIAL SEAL)

[Signature] (Seal)
Name: Frank Capri

Address: 7181 E. Camelback Road, #706-1
Scottsdale, Arizona 85251



****SIGNATURE IS TO BE WITNESSED BY AN INDIVIDUAL (AS UNOFFICIAL WITNESS) AND BY A
NOTARY PUBLIC WHO SHOULD AFFIX HIS OR HER NOTARIAL SEAL AND INDICATE THE
EXPIRATION DATE OF HIS OR HER COMMISSION BELOW THE SIGNATURE LINE.**

Riverbanks Renaissance Phase
 3805 Edwards Rd., Ste. 700
 Cincinnati, OH 45209
 (513) 241-5800

1/31/2013

ACCOUNT NUMBER

CRGE Cincinnati, LLC
 dba Toby Keith I love this Bar
 6263 North Scottsdale Road
 Suite 145
 Scottsdale, AZ 85250

INVOICE #:

00000866

MAKE CHECKS PAYABLE TO: Riverbanks Renaissance Phase I-A Owner

BALANCE DUE

231,980.78

Date	Code	Description	Charges	Payments	Amount Due
5/11/2012	LAT	May 2012 late fee	2,553.43	.00	2,553.43
10/9/2012	LAT	Oct 2012 late fee	2,296.06	.00	2,296.06
10/15/2012	GAS	Gas 08-21 to 09-20-12	931.13	.00	931.13
10/15/2012	WAT	Water 08-21 to 09-20-12	684.88	.00	684.88
10/22/2012	ELT	Elect 08-21 to 09-20-12	6,053.20	.00	6,053.20
11/1/2012	REN	Rent	41,066.67	.00	41,066.67
11/1/2012	REP	Rent - Prorated	1,866.67	.00	1,866.67
11/1/2012	TAX	Real Estate Tax	5,600.00	.00	5,600.00
11/1/2012	TXP	Real Estate Tax-Prorated	254.55	.00	254.55
11/9/2012	LAT	Nov 2012 late fee	2,258.28	.00	2,258.28
11/15/2012	ELT	Electric usage 09-20 to 1	4,842.41	.00	4,842.41
11/15/2012	GAS	Gas usage 09-20 to 1	933.11	.00	933.11
11/15/2012	WAT	Water usage 09-20 to 10-19-	749.93	.00	749.93
12/1/2012	REN	Rent	41,066.67	.00	41,066.67
12/1/2012	REP	Rent - Prorated	1,866.67	.00	1,866.67
12/1/2012	TAX	Real Estate Tax	5,600.00	.00	5,600.00
12/1/2012	TXP	Real Estate Tax-Prorated	254.55	.00	254.55
12/10/2012	LAT	Dec 2012 Late fee	2,302.86	.00	2,302.86
12/19/2012	ELT	Electric usage 10-19 to 11-19-	5,507.44	.00	5,507.44
12/19/2012	GAS	Gas usage 10-19 to 11-19-12	955.69	.00	955.69
1/1/2013	REN	Rent	41,066.67	.00	41,066.67

Exhibit D

Riverbanks Renaissance Phase
 3805 Edwards Rd., Ste. 700
 Cincinnati, OH 45209
 (513) 241-5800

1/31/2013

ACCOUNT NUMBER

CRGE Cincinnati, LLC
 dba Toby Keith I love this Bar
 6263 North Scottsdale Road
 Suite 145
 Scottsdale, AZ 85250

INVOICE #:

00000866

MAKE CHECKS PAYABLE TO: Riverbanks Renaissance Phase I-A Owner

BALANCE DUE

231,980.78

Date	Code	Description	Charges	Payments	Amount Due
1/1/2013	TAX	Real Estate Tax	5,600.00	.00	5,600.00
1/14/2013	WAT	water usage 10-19 to 11-19-12	940.60	.00	940.60
1/15/2013	ELT	Electric 11-19 to 12-20-12	5,667.85	.00	5,667.85
1/15/2013	GAS	Gas 11-19 to 12-20-12	879.47	.00	879.47
1/18/2013	WAT	water adjust 11/01-12/01/11	57.70	.00	57.70
1/18/2013	WAT	water adjust 12/01-01/01/12	42.84	.00	42.84
1/18/2013	WAT	water adjust 01/01-02/01/12	188.37	.00	188.37
1/18/2013	WAT	water adjust 02/01-03/01/12	68.51	.00	68.51
1/18/2013	WAT	water adjust 03/01-04/01/12	332.36	.00	332.36
1/18/2013	WAT	water adjust 04/01-05/01/12	318.31	.00	318.31
1/18/2013	WAT	water adjust 05/01-06/01/12	284.47	.00	284.47
1/18/2013	WAT	water adjust 06/01-07/01/12	301.80	.00	301.80
1/18/2013	WAT	water adjust 07/01-07/23/12	222.38	.00	222.38
1/18/2013	WAT	water adjust 07/23-08/21/12	285.30	.00	285.30
1/18/2013	WAT	water adjust 08/21-09/20/12	242.67	.00	242.67
1/18/2013	WAT	water adjust 09/20-10/19/12	264.61	.00	264.61
1/21/2013	WAT	Water 11-19-12 to 12-20-12	906.00	.00	906.00
2/1/2013	REN	Rent	41,066.67	.00	41,066.67
2/1/2013	TAX	Real Estate Tax	5,600.00	.00	5,600.00

1/31/2013

ACCOUNT NUMBER

Please send this portion of the statement with your remittance.

INVOICE #:

00000866

CRGE Cincinnati, LLC

Riverbanks Renaissance Phase
 3805 Edwards Rd., Ste. 700
 Cincinnati, OH 45209
 (513) 241-5800

Current	30	60	90	120	BALANCE DUE
104,336.58	8,765.99	57,571.62	58,753.16	2,553.43	231,980.78



J E F F R E Y R
ANDERSON
R E A L E S T A T E

December 13, 2012

VIA OVERNIGHT COURIER

CRGE Cincinnati, LLC
Dba Toby Keith I love this Bar
6263 North Scottsdale Road
Suite 145
Scottsdale, AZ 85250

RE: 145 Second Street, Cincinnati, Ohio 45202 (the "Promises").

Dear Tenant:


As you are aware, the terms of your Lease for the above-referenced premises require that payment of your rent, assessments and other charges under the Lease be made before the first of each month, in advance. Our records reflect that, as of the date of this mailing, you are in arrears in the payment of rent, assessments and other charges under the Lease in the amount of \$121,181.07.

Your failure to pay rent in a timely manner is a violation of the terms of your Lease Agreement, placing you in default of your Lease Agreement. This situation must be remedied immediately by payment of all amounts past due. Payment should be made immediately to Riverbanks Renaissance Phase I-A Owner.

In the event that payment in full of all amounts past due is not received within ten (10) days of the date of this letter, the Landlord will determine what course of action to pursue. Among the remedies available to Landlord as a result of your default are eviction from the premises and/or forfeiture of the Lease.

You are further notified that Landlord's acceptance of any late rental payment does not constitute waiver of Landlord's rights pursuant to the terms of the Lease, nor is it a modification of the terms of the Lease.

Very Truly Yours,


Mindy Helzer
Agent for Owner

cc: Laura Swadel

Tracy Nemenz Schwegmann

Gregory E. McClure, Esq.

Frank Capri - guarantor

Capri Concepts, LLC - guarantor

Director, Economic Development Division - City of Cincinnati

EARL K. MESSER
513.357.9652
messer@taftlaw.com

January 22, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CRGE CINCINNATI, LLC
7181 E. Camelback Road, #706-1
Scottsdale, AZ 85251


Re: Lease between CRGE Cincinnati, LLC, a Arizona Limited Liability Company
("Tenant") and Riverbanks Renaissance Phase I-A Owner, LLC (the "Landlord"), a
Delaware Limited Liability Company, dated December 2010

Dear Sir/Madam:

This firm represents the Landlord in connection with the above referenced Lease. By prior correspondence from the Landlord and its representatives, you have been notified of numerous defaults under the terms of the Lease, including a failure to pay rent when due. Those defaults, including the failure to pay rent when due, have continued and currently exist.

Please consider this letter additional notice that if Tenant does not cure the failure to pay rent within five (5) business days after the date of this notice, such failure will constitute an additional Event of Default under the Lease. If the failure to pay rent is not cured within that time, the Landlord will be forced to pursue other remedies available under the Lease, including but not limited, litigation.

Sincerely yours,



Earl K. Messer

EKM:dc

CRGE CINCINNATI, LLC

January 22, 2013

Page 2

cc: Gregory E. McClure, Esq. (via certified mail)
Lorona Steiner Ducar, Ltd.
3003 N. Central Avenue, Suite 1500
Phoenix, AZ 85012

Gregory E. McClure, Esq. (via certified mail)
4550 E. Bell Road, Suite 150
Phoenix, AZ 85032

Frank Capri –Guarantor (via certified mail)
7181 E. Camelback Road, #706-1
Scottsdale, AZ 85251

Capri Concepts, LLC – Guarantor (via certified mail)
7181 E. Camelback Road, #706-1
Scottsdale, AZ 85251